UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/68/Add.3
30 October 1992

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Initial reports of States parties due in 1991

Addendum

IRELAND

[22 June 1992]

CONTENTS

	Paragraphs	Page
Introduction	1 - 2	3
Information in relation to each of the articles	3 - 245	3
Article 1	3	3
Article 2	4 - 13	3
Article 3	14 - 28	7
Article 4	29 - 31	12
Article 5	32	13
Article 6	33 - 47	13
Article 7	48 - 51	18
Article 8	52 - 53	19
Article 9	54 - 69	19

CONTENTS (continued)

	Paragraphs	Page
Article 10	70 - 109	23
Article 11	110	32
Article 12	111 - 116	32
Article 13	117 - 118	34
Article 14	119 - 128	34
Article 15	129 - 130	40
Article 16	131	40
Article 17	132 - 137	40
Article 18	138 - 142	42
Article 19	143 - 163	44
Article 20	164 - 169	49
Article 21	170	50
Article 22	171 - 183	50
Article 23	184 - 188	53
Article 24	189 - 192	55
Article 25	193 - 217	57
Article 26	218 - 236	63
Article 27	237 - 245	66
List of annexes*		69

* The annexes, as received in English from the Government of Ireland, are available for consultation in the files of the United Nations Centre for Human Rights. They are common to this report and to the core document of Ireland (HRI/CORE/1/Add.15).

Introduction

1. Ireland has prepared the present report in accordance with Article 40 of the International Covenant on Civil and Political Rights. This report attempts to portray the actual reality in Ireland and not just the legal regime. It describes on an article-by-article basis the legislative, judicial, administrative or other measures which are in place or have been adopted in Ireland to give effect to the provisions of the Covenant. This report should be read in conjunction with the core document of Ireland (HRI/CORE/1/Add.15) which outlines the Irish political, legal and administrative system.

2. Ireland lodged its instrument of ratification to the International Covenant on Civil and Political Rights with the United Nations Secretariat on 7 December 1989. In the light of an initiative which it has taken subsequently, the Irish Government is in a position to be able to withdraw one of the six reservations which were lodged at the time of ratification. Since Ireland has abolished the death penalty (Criminal Justice Act, 1990) the reservation made with regard to Article 6, paragraph 5, of the Covenant no longer applies.

INFORMATION IN RELATION TO EACH OF THE ARTICLES

Article 1

3. These principles are accepted by Ireland and are reflected in particular by Articles 5, 6 and 10 of the Constitution and by the support given by Ireland in the various United Nations bodies to resolutions concerning these rights. Ireland is a sovereign, independent, democratic State and, in accordance with the Constitution of Ireland, the Irish Government accepts the generally recognized principles of international law, observes the Charter of the United Nations, recognizes that all powers of Government derive from the people and is fully committed to the principles contained in this Article. Ireland has no colonies and is not responsible for the administration of any Non-Self-Governing or Trust Territories.

Article 2

4. As has been explained in Ireland's core document (HRI/CORE/1/Add.15), international treaties are not self-executing in Ireland. The approach adopted when the decision was made to accede to the Covenant was to identify those areas in which Irish law and practice did not conform with the Covenant and in which legislation would be necessary, and to identify areas in which, for reasons of policy, reservations were regarded as appropriate. These steps were referred to in paragraphs 29 to 33 of the core document. As a result of this examination legislative changes were identified as necessary in relation to the law on the death penalty and on incitement to hatred, and the provisions of the Covenant were fully taken into account in drafting the new laws. As part of that process, and again as part of the process of drafting the present report, it was necessary to circulate every Government Department to seek their views as to whether, and how, the Covenant is implemented in respect of their areas of responsibility. This exercise has, of necessity,

drawn the provisions of the Covenant to the attention of those responsible for the formulation and implementation of policy within Government and the administration generally.

5. Education in relation to human rights is customary for all members of the police force (known as Garda Siochana). This education takes the form of:

(a) Lectures on the Irish Constitution particularly relating to the Articles on fundamental rights.

(b) Lectures on relevant statute law and statutory instruments, e.g. The Criminal Justice Act, 1984, and The Criminal Justice Act, 1984 (treatment of persons in custody in Garda Siochana stations) Regulations, 1987.

(c) Lectures as part of in-service courses and specialized seminars. In this regard specialized seminars were held in the years 1985, 1986 and 1987 for all ranks after the legislation referred to above came into operation.

Education of the police force in relation to the international law of human rights and international humanitarian law form part of the ongoing instruction on all educational courses for police personnel. These matters touch on values enshrined in the Irish Constitution which is the fundamental basis of law in this jurisdiction and against which all other laws are to be judged. Recent legislation giving additional police powers has been balanced by safeguards and by a right to redress against the members of the Garda Siochana who abuse their authority. In this regard it is worth noting that the extra powers given to the Garda Siochana in the Criminal Justice Act, 1984 were only one part of a three-part package. The treatment of persons in custody in Garda Siochana stations, Regulations, 1987 and the Garda Siochana Complaints Act, 1986 formed the other parts.

6. Article 2 requires that the rights recognized in the Covenant shall be respected by States parties and ensured to all individuals within their territory "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The Constitution of Ireland provides a general guarantee of equality before the law in Article 40.1 which reads as follows:

> "All citizens shall, as human persons, be held equal before the law.
>
> This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function".

It is clear that the making of distinctions by the State based on race, colour, religion, political or other opinion, national or social origin, property, birth or other status which affect citizens in their dignity as human beings would amount to a contravention of this provision of the

Constitution of Ireland. In Quinn's Supermarket v. Attorney-General [1972] I.R.* 1 the Supreme Court described this provision as a "guarantee of equality as human persons and ... a guarantee related to their dignity as human beings and a guarantee against any inequalities grounded upon an assumption, or indeed a belief, that some individual or individuals or classes of individuals, by reason of their human attributes or their ethnic or racial, social or religious background, are to be treated as the inferior or superior of other individuals in the community. This list does not pretend to be complete ..."

7. There have been a considerable number of cases in which the provisions of Article 40.1 have been invoked before the Irish courts. In none of these, however, has the alleged inequality before the law been based on race, colour, political or other opinion, national or social origin, or property. It is suggested that the absence of such cases reflects the rarity of the existence of discrimination on such grounds. It must, of course, be conceded that there is a high degree of racial and ethnic homogeneity in the Irish population so that the opportunities for such discrimination are reduced.

8. There have been three cases in which statutes or schemes which discriminated on grounds of religious belief or status have been struck down by the Irish courts. Here, it should be noted that in addition to Article 40.1 the provisions of Article 44 expressly outlaw religious discrimination, and in each of the cases Article 44 rather than Article 40.1 formed the basis for the Court's decision. In Quinn's Supermarket v. Attorney-General [1972] I.R. 1, a Ministerial Order, which restricted the opening hours of butchers' shops but did not apply to kosher butchers (butchers selling meat prepared according to Jewish religious laws), was found invalid. Without some special provision, kosher butchers would have been unable to open at weekends after the ending of the Jewish Sabbath, but the Supreme Court held that a complete exemption from the rules concerning opening hours was impermissibly wide and was discriminatory under Article 44. They also held that a failure to make appropriate special provision for kosher shops to open late on Saturday would have been discriminatory. The Court, however, did not accept that the inequality which arose in the treatment of businesses differently was one which affected the plaintiffs as human persons and therefore held that Article 40.1 did not arise. In Mulloy v. Minister for Education [1975] I.R. 88, a distinction in salary rules between lay and religious teachers was held contrary to Article 44. The possible applicability of Article 40.1 was not argued. In M. v. An Bord Uchtala [1975] I.R. 81, a law which required both adoptive parents to be of the same religion as an adopted child was challenged by a married couple who were of different religions. The couple had found themselves unable to adopt a child born to the wife before the marriage by a father who was not the man she subsequently married. The High Court (Pringle J.) found the law to contravene Article 44, and he found it unnecessary to rule on the question of whether it also

---

* The reference "I.R." in the text refers to the catalogue of legal cases known as "Irish Reports".

contravened Article 40.1. In practice, because of the express provisions of Article 44 in relation to religious discrimination, it seems more likely than Article 40.1. to be used as a basis for decision in this area.

9. The question of discrimination based on sex will be dealt with in relation to Article 3.

10. So far as concerns language, the factual position concerning the languages spoken in Ireland is set out in section I.B of the core document (HRI/CORE/1/Add.15, paras. 4-5). Article 8 of the Constitution provides that the Irish language, as the national language, is the first official language, and that the English language is recognized as a second official language. Provision may be made by law for the exclusive use of either language. Although native speakers of Irish are a small minority of the population as a whole the position of Irish as the first official language and the policy of reviving the Irish language is a safeguard of their rights. The courts have recognized the rights of litigants to conduct their cases through either language (R O'Coileain) v. D.J. Crotty [1927] 61 ILTR 81, The State (Buchan) v. Coyne (1936) 70 ILTR 185, O'Monachain v. An Taoiseach (unreported, Supreme Court, 16 July, 1982)). With regard to the promotion of the cultural, social and economic welfare of Irish-speaking areas this matter is dealt with separately, below.

11. Allegations are sometimes made of discrimination against the travelling community. This is a community whose members, like the Gypsies in other countries, used to travel from place to place in pursuit of various traditional callings. Many of these occupations in the modern economic climate are obsolete. Nowadays travellers tend to live in caravans close to the major cities. Some of the bodies representing travellers claim that members of the community constitute a distinct ethnic group. The basis of this claim is not clear. Travellers do not constitute a distinct group from the population as a whole in religion, language or race. They are not a Romany or Gypsy people. However, members of the community are undoubtedly entitled to all the rights under the Covenant, are not to be discriminated against as a group and it does not appear to be of particular significance whether their rights relate to their alleged status as an ethnic group or to their social origin. Travellers in Ireland have the same civil and political rights as other citizens under the Constitution. The Government of Ireland pursues a policy to ensure as far as possible respect for their social and economic rights (see annex 4). So far as discrimination against travellers by private individuals is concerned, the Government has applied the law in relation to incitement to hatred to cover incitement to hatred against travellers. The question of whether further protection for travellers rights is required is kept under review.

12. So far as concerns the rights of non-citizens in Ireland, the position is somewhat complex. Many of the rights referred to in the Irish Constitution are referred to as rights of the citizen. In particular, this applies to the rights set out in Article 40. However, other rights are not so qualified. The family rights referred to in Article 41 are expressed to be "inalienable and imprescriptible ... antecedent and superior to all positive law". Rights in relation to education (Article 42) are similarly described as "inalienable" and property rights as deriving from the fact "that man, in virtue of his

national being, has the natural right, antecedent to positive law, to the private ownership of external goods" (Article 43). There is, as can be seen, a strong anti-positivist natural law idea of human rights inherent in the Irish Constitution, and this idea has strongly influenced the development of jurisprudence concerning unspecified "personal rights" (see HRI/CORE/1/Add.15). Obviously, a concept of rights deriving from the rational being of man, or which are antecedent to positive law, sits uneasily with the makings of distinctions between persons according to whether they are citizens or not, and in practice the Irish courts have not made such distinctions, nor has it been the practice of the State, in defending actions brought to vindicate human rights, to ask them to make such distinctions. In the State (McFadden) v. Governor of Mountjoy Prison (No. 1) [1981] ILRM 113, a case concerned with the rights to fair procedures of a British subject sought by an extradition warrant, the Irish High Court (Barrington J.) said (at p. 117) that "the prosecutor is not an Irish citizen, but Mr. Hill who appears for the respondent has taken no point on this. It appears to me that he was right not to do so. The substantive rights and liabilities of an alien may be different to those of a citizen. The alien, for instance, may not have the right to vote or may be liable to deportation. But when the Constitution prescribes basic fairness of procedures in the administration of the law it does so, not only because citizens have rights, but also because the Courts in the administration of justice are expected to observe certain forms of due process enshrined in the Constitution. Once the courts have seisin of a dispute, it is difficult to see how the standards they should apply in investigating it should, in fairness, be any different in the case of an alien than those applied in the case of a citizen".

13. There are very few Irish laws that treat aliens differently from citizens: what discrimination exists is mainly in the political arena and as regards jury service, ownership of land in Ireland and also of Irish registered ships and aircraft and becoming an officer in the Defence Forces. With regard to the right of aliens to choose a residence, as per Article 12, the provisions of the Land Act, 1965, (section 45) relating to the purchase of land by non-nationals do not apply to land under five acres and consequently it cannot be said that these provisions restrict the right of non-nationals to choose a residence. Irish law and practice in these areas are consistent with Article 25 of the Covenant.

Article 3

Equality mechanisms in place in Ireland

A. Introduction

14. The formal equality in law of all citizens as set out in Article 40.1 of the 1937 Constitution of Ireland has already been discussed in detail in the comments on Article 2 of the Covenant above. Over the past 20 years or so, Ireland has seen an impressive list of legislative achievements and the establishment of administrative structures which have helped to enhance the status of Irish women in many areas. Ireland has had a strong tradition of women as accepted and valued participants in political life. As early as 1919, Ireland's first Republican Government appointed a Woman Minister for Labour - Constance Markievicz - and the Republican Movement around that time

was supported by Cumman na mBan - a women's political group organized on a national scale. This ambitious start to the early involvement of women in Irish political life was not, however, evenly sustained in later years.

15. The advent of the 1960s saw external forces merge with internal developments in Ireland to create a climate in which a range of disadvantages and discriminations against women was enumerated and articulated along with demands for reform. The feminist movement arrived in Ireland at a time when the population had begun to grow after decades of decline and Ireland had, as a result a young age profile by international standards (currently over 50 per cent of the population is under 30 years of age). It was also a time which saw the introduction of free second level education in 1967 along with a major expansion in higher education.

16. In 1970 the Government of the day appointed a Commission on the Status of Women, and its Report published in 1972 provided a checklist against which progress on the position of Irish women could be measured. Most of the recommendations identified in that Report have since been implemented. As regards the equality mechanisms which are currently in place in Ireland to enhance the status of women in Irish society and to ensure sustained progress in achieving real equality between women and men, the following is the position:

B. Department of the Taoiseach (Prime Minister)

17. Since 1987, the Taoiseach (Prime Minister) has instructed Government Ministers to advance the position and status of women in all aspects of their individual responsibilities. In addition, he has assigned a monitoring and coordinating role on all aspects of Government policy as they affect women to a Minister of State at his Department. In this way, it is the responsibility of the Minister of State to articulate the full impact of Government initiatives in the legislative, economic and social fields on the status of Irish women. For example, the Social Welfare (No. 2) Act, 1985 introduced the principle of equal treatment between men and women in our social welfare code.

18. The Minister of State directly provides almost the entire funding for the Council for the Status of Women, which is the umbrella organization for some 80 women's groups in Ireland (see separate note on the Council beneath). The Minister also provides funding for the second Commission on the Status of Women, whose Secretariat is also provided by the Department of the Taoiseach (see paras. 21-22). In September 1988, the Minister of State published a booklet on the Development of Equal Opportunities. This booklet outlined the range of measures which each Government Department had taken in the 18-month period since March 1987, to advance the status of women in Irish society by practical measures. It also outlined the level of representation of women on all State companies, boards and commissions. A second publication on the Development of Equal Opportunities, to cover the period September 1988 to June 1991, is about to be published.

19. The Minister of State also actively participates in the ongoing debate on equality in Irish society by such means as participation in seminars and conferences; periodic attendance at meetings of the Joint Parliamentary Committee on Women's Rights and of the European Parliament's Committee on

Women's Rights; and attendance at international Ministerial Conferences on equality issues. It is also the Minister's responsibility to report to the United Nations Committee on the Elimination of Discrimination against Women on the measures taken to give effect to the United Nations Convention on the Elimination of All Forms of Discrimination against Women, to which Ireland acceded in 1985.

C. The Joint Parliamentary Committee on Women's Rights

20. The Joint Parliamentary Committee on Women's Rights was established in 1983 and is made up of members from political groupings in the Upper and Lower Houses of the Irish Parliament. Ireland's Committee is unique among the National Parliaments of the 12 Member States of the European Community. The Committee, which holds regular sessions in public, has the following terms of reference - its purpose is to: (a) examine or propose legislative measures which would materially affect the interests of women; (b) consider means by which any areas of discrimination against women can be eliminated and by which the obstacles to their full participation in the political, social and economic life of the community can be removed; (c) consider specific economic and social disadvantages applying to women in the home and, bearing in mind the special nature of their contribution to the community, to recommend effective policy and administrative changes to help eliminate these disadvantages; and to report to the Houses of the Parliament thereon. To date the Committee has produced important reports on a number of issues, including education, social welfare, the portrayal of women in the media, and sexual violence.

D. Second Commission on the Status of Women

21. The Second Commission on the Status of Women is an independent Commission which was established by the Government in November 1990 to consider and make recommendations on the means, administrative and legislative, by which women will be able to participate on equal terms and conditions with men in economic, social, political and cultural life and, to this end, to consider the efficacy and feasibility of positive action measures. The Commission, in its deliberations, is also obliged to pay special attention to the needs of women in the home. Funding for the Commission amounted to £16,000 in 1990 and £50,000 in 1991. The Commission has been requested to report to the Government within 18 months and its report can, therefore, be expected in the first half of 1992.

22. The extent of the interest which the Commission's establishment has attracted can be gauged by the fact that some 600 submissions were received by it in response to invitations placed in the national press and other media. Notwithstanding its obligation to report to Government within 18 months, the Commission decided to make interim recommendations by publishing its First Statement and presenting it to the Taoiseach (Prime Minister) on 25 April, 1991. The Commission's interim recommendations dealt with joint ownership of the family home and chattels; an assessment of the impact of all Government policy changes on women; representation of women on the boards of State-sponsored Bodies; withdrawal of National Lottery and other public funds from clubs which operate discriminatory policies against women; appointment of a woman to the Top Level Appointments Committee in the Civil Service; age

limits for recruitment in the public sector; and the elimination of all sexism and stereotyping from the primary school curriculum handbook. When he received the First Statement of the Commission containing these interim recommendations, the Taoiseach (Prime Minister) was in a position to indicate that the Government were prepared to accept the recommendations in principle as a clear illustration of their firm commitment to advancing the status of women. The Taoiseach subsequently wrote to all Government Ministers requesting them to have regard, in their relevant areas of responsibilities, to the commitments made to the Commission.

E. Employment Equality Agency

23. The Employment Equality Act, 1977 - which makes it unlawful to discriminate on grounds of sex or marital status in relation to recruitment for employment, conditions of employment, training or in the matter of opportunities for promotion - also provided for the establishment of an Employment Equality Agency. The Agency, which came into operation on 1 October 1977, is a statutory body composed of a chairperson and ten ordinary members including representatives of workers, employers and women's organizations. They are appointed by the Minister for Labour for a term of five years.

24. The main functions of the Agency are the following: to work towards the elimination of discrimination in employment; to promote equality of opportunity in employment between men and women; and to keep under review the operation of the Anti-Discrimination (Pay) Act, 1974 and the Employment Equality Act, 1977 and, where necessary, to make proposals for amending either or both of those Acts.

25. The Labour Court, established under the Industrial Relations Act, 1946, provides machinery for the formal investigation of disputes. The Court consists of a Chairman and Deputy Chairmen and ordinary members respresentative of employers and workers. Whereas the Labour Court has been assigned the main enforcement role under the Employment Equality Act, the Agency has certain enforcement functions also, but only in the public interest. It may conduct formal investigations and, if satisfied that there are practices or conduct which contravene the Anti-Discrimination (Pay) Act, 1974, or the Employment Equality Act, 1977, it can issue non-discrimination notices requiring that such practices cease. The Agency is empowered to seek a High Court injunction in respect of persistent discrimination. Moreover, the Agency has the sole right to initiate proceedings in cases of the following: discriminatory advertisement; pressure on persons to discriminate; and where there is a general policy of discriminatory practices.

F. The Council for the Status of Women

26. Following the publication of the Report of the first Commission for the Status of Women in 1972, an ad hoc committee of ten women's organizations formed itself into a Council and asked other organizations interested in raising the status of women to become affiliated with a common objective of ensuring the implementation of the recommendations in the Commission's Report. The new organization, the Council for the Status of Women, now acts as an umbrella organization for the many women's groups and organizations and it

receives almost its entire funds from the Department of the Taoiseach in order to assist its activities. In 1991, the Council secured a 19 per cent increase over its 1990 subvention to bring its allocation to £114,000. The objectives of the Council are: (a) to provide liaison between Government Departments and women's organizations; (b) to consider any legislative proposals of concern to women; and (c) to examine and contest cases of discrimination against women.

27. The Council's ongoing activities includes the following:

(a) provides an information/referral service for women throughout the country;

(b) monitors legislation particularly affecting women, submits proposals for amendments and conducts political lobbying on behalf of women;

(c) highlights women's issues in the media;

(d) publishes a quarterly Newsletter;

(e) organizes courses for women in Assertiveness Training and Sexuality;

(f) provides meeting facilities for women's groups;

(g) organizes and assists in the organization of special conferences relating to women's issues;

(h) funds and facilitates the National Women's Talent Bank to ensure the participation of women at policy-making level;

(i) represents women at home and abroad through international contacts;

(j) gives advice and financial help through European Community funds to member organizations who wish to organize conferences, seminars, etc. on subjects relating to the European Communities;

(k) acts as a consultant body to the National Council for Curriculum and Assessment of the Department of Education; and

(l) participates fully in the deliberations of the second Commission on the Status of Women by virtue of having two representatives on the Commission.

G. Aliens' Law

28. In aliens' law generally there are no distinctions which affect the equal entitlement of men and women to the enjoyment of all the rights set out in the Covenant. The requirement that an alien male married to an Irish female need register as an alien (Article 11 (C) (i) of the Aliens Order 1946: S.R. & O. No. 395 of 1946) is not applicable to a female in a corresponding position but this registration requirement does not affect in any way the equal enjoyment of the Covenant's rights by men and women. The law and practice relating to Irish citizenship conforms in all respects with the terms of Article 3. The Irish Nationality and Citizenship Act, 1986 removed the distinction which

existed between the legislative provisions which applied to women and to men with regard to post-nuptial citizenship. Prior to the introduction of the 1986 Act such citizenship could only be granted where women married men who were Irish citizens other than by means of naturalization (section 8 of the 1956 Irish Nationality and Citizenship Act). A man, who married an Irish citizen, would have had to seek a Certificate of Naturalization under section 16 of that Act. Section 3 of the 1986 Act now provides for the grant of post-nuptial citizenship to both men and women subject to conditions which apply equally to both sexes.

Article 4

29. Article 28.3.3 of the Constitution provides that:

> "Nothing in this Constitution shall be invoked to invalidate any law enacted by the Oireachtas which is expressed to be for the purpose of securing the public safety and the preservation of the state in time of war or armed rebellion, or to nullify any act done or purporting to be done in time of war or armed rebellion in pursuance of any such law. In this sub-section 'time of war' includes a time when there is taking place an armed conflict in which the State is not a participant but in respect of which each of the Houses of the Oireachtas shall have resolved that, arising out of such armed conflict, a national emergency exists affecting the vital interests of the State and 'time of war or armed rebellion' includes such time after the termination of any war, or of any such armed conflict as aforesaid, or of an armed rebellion, as may elapse until each of the Houses of the Oireachtas shall have resolved that the national emergency occasioned by such war, armed conflict, or armed rebellion has ceased to exist".

In accordance with that Article, the Houses of the Oireachtas on 1 September 1976 resolved that "arising out of the armed conflict now taking place in Northern Ireland, a national emergency exists affecting the vital interests of the State".

30. The only legislation enacted by the Houses of the Oireachtas pursuant to that resolution is the Emergency Powers Act 1976. That Act is expressed to be "an Act for the purpose of securing the public safety and the preservation of the State in time of an armed conflict in respect of which each of the Houses of the Oireachtas has adopted a resolution on the first day of September 1976, pursuant to subsection 3 of section 3 of Article 28 of the Constitution." The operative provision of the Act is section 2 which empowers a member of the Garda Siochana to stop, search, question and arrest any person suspected with reasonable cause of having committed, committing or being about to commit an offence under the Offences Against the State Act, 1939 or a scheduled offence for the purpose of that Act or suspected with reasonable cause of carrying any document or other article or thing or being in possession of information relating to the commission or intended commission of the offence. The Act also provides that a person arrested under the section may be kept in custody in a Garda station, prison or other convenient place for a period of 48 hours from the time of his arrest and may, if a member of the Garda Siochana not

below the rank of Chief Superintendent so directs, be kept in custody for a further period not exceeding five days. At the end of that period a person must be charged or released.

31. The 1976 Act further provided that the provisions of section 2 would lapse twelve months after the date of its enactment unless continued in force by an order made by the Government. Provision is also made for the provisions of section 2 to be reactivated by an order of the Government at any time when section 2 is not in force and for the Act to expire whenever each of the Houses of the Oireachtas resolves that the national emergency has ceased to exist. Section 2 of the Act entered into force on 16 October 1976 and continued in force until 15 October 1977 when it ceased to have effect in accordance with the provisions of the Act. No order has been made by the Government continuing it in force since that date. No resolutions have been passed by the Houses of the Oireachtas declaring that the national emergency resolved to exist on 1 September 1976 has ceased to exist.

Article 5

32. The provisions of the Constitution and legislation in the area of criminal and public law are designed to prevent activities aimed at the destruction of any of the rights and freedoms provided for in the Covenant.

Article 6

A. Paragraph 1 - Right to life

33. The provisions of paragraph 1 of Article 6 on the right to life are similar to those in Articles 40.3.2 and 3 of the Constitution which provide as follows:

> "2 The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life ... of every citizen.
>
> 3 The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right."

Attacks on or threats to life are protected by a wide range of provisions. Among the offences for which severe penalties are provided for are genocide, murder, manslaughter, kidnapping, dangerous driving and serious assaults.

Right to life of the unborn

34. Subsection 3° of section 3 of Article 40 of the Constitution (which is set out in the preceding paragraph) was inserted in the Constitution following the enactment of the Eighth Amendment to the Constitution Act, 1983. This amendment was effected in the manner prescribed by Article 46 of the Constitution, namely, by means of a Bill passed by both Houses of the Oireachtas (Parliament) and approved by a majority of those citizens who voted

in a referendum. The effect of this provision and its relationship to other rights has been judicially considered by the Irish courts on four occasions.

35. In Attorney-General (SPUC) v. Open Door Counselling Limited [1988] I.R. 593, an action was brought by the Society for the Protection of Unborn Children Ireland Limited (SPUC) against two Dublin organizations providing advisory services for pregnant women. The action sought a declaration that the activities of the defendants, their servants or agents in counselling pregnant women within the jurisdiction of the court to travel abroad to obtain abortions or to obtain further advice on abortion within that foreign jurisdiction and in assisting them in so doing were unlawful having regard to the provisions of Article 40.3.3°, and an injunction to prohibit them from counselling, procuring or assisting pregnant women to travel. The defendants admitted that they provided non-directive counselling and that this included discussing the option of terminating pregnancy in Great Britain and arranging a reference to a medical clinic there where the woman wished to consider the abortion option further. The High Court (Hamilton P.) granted the orders sought. It held that the qualified right to privacy, the rights of assocation and freedom of expression and the right to disseminate information could not be invoked to interfere with the fundamental right to life of the unborn. The Supreme Court, on appeal, varied the order to declare that the defendants activities "in assisting pregnant women within the jurisdiction to travel abroad to obtain abortions by referral to a clinic; by the making of their travel arrangements, or by informing them of the identity and location of and method of communication with a specified clinic or clinics" were unlawful having regard to Article 40.3.3° and granted an injunction to restrain this activity. The Supreme Court held that it was not necessary for the defendants to advise or encourage the procuring of abortions to render their activities unlawful; it was enough that their admitted activities were assisting pregnant women to travel abroad to have abortions. The Court also held that there was no implied or unenumerated constitutional right to information about the availability of a service of abortion outside the State which, if availed of, would have the direct consequence of destroying the expressly constitutionally guaranteed right to life of the unborn. The defendants in the case, Open Door Counselling Limited and Dublin Well Woman Centre Limited, subsequently submitted two applications to the European Commission on Human Rights, pursuant to Article 25 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, for breach of Articles 8 (right to respect for private and family life), 10 (freedom of expression and information) and 14 (prohibition of discrimination on grounds of sex) of the Convention. By a decision of 15 May 1990 (not yet reported) the Commission declared both applications admissible. (Applications 14234/88, Open Door Counselling Ltd. v. Ireland and 14235/88, Dublin Well Woman Centre and others v. Ireland). The European Court of Human Rights heard these applications on 24 March 1992, but has not at the time of writing given judgement.

36. In SPUC v. Coogan [1989] I.R. 734, in a case where an injunction was sought to restrain publication of a student guide containing information on how and where to obtain abortions in Great Britain, the Supreme Court held that the plaintiff, a company limited by guarantee with the object of protecting the right to life of the unborn, had locus standi to institute court proceedings to protect the right to life of the unborn without having to

obtain the Attorney-General's agreement to the use of relator proceedings (as had been done in the earlier proceedings against Open Door and Well Woman).

37. SPUC v. Grogan [1989] I.R. 753 was an application for an injunction to restrain publication by a number of representative student organizations and a printer of information on the identity and location of and concerning the method of communication with abortion clinics. The High Court (Carroll J.) distinguished the case from that in Open Door where not merely information but assistance had been provided, and held that the application raised a question of European Community law, as to whether there was an entitlement in Community law to receive or to give information concerning abortion outside the State. The Court therefore referred that question to the Court of Justice of the European Communities for a preliminary ruling under Article 177 of the EEC Treaty. The Court declined to grant an interlocutory injunction pending the decision of the European court. On appeal from the decision to refuse an interlocutory injunction, the Supreme Court held that the publishing and distribution of the names, addresses and telephone numbers of abortion clinics in the United Kingdom was unconstitutional and a breach of Article 40.3.3° and could assist and was intended to assist in the destruction of the right to life of an unborn child (per Finlay C.J. at p. 764). Walsh J. considered that the High Court judge had "made a fundamental error in her initial premise by assuming that there was a right vested in a pregnant woman to receive in this State information calculated to assist her in the accomplishment of her intent to terminate, either within or without this State, the protected unborn life. Such a right does not exist".

38. On the reference to the European Court of Justice, that Court subsequently decided (SPUC v. Grogan Case c - 159/90 [1991] 3 C.M.L.R. 849) (a) that medical termination of pregnancy, performed in accordance with the law of the state in which it is carried out, constitutes a service within the meaning of Article 60 of the EEC Treaty and (b) that it is not contrary to Community law for a Member State in which medical termination of pregnancy is forbidden, to prohibit student associations from distributing information about the identity and location of clinics in another Member State where voluntary termination of pregnancy is lawfully carried out, and the means of communicating with those clinics, where the clinics in question have no involvement in the distribution of the said information.

39. Attorney-General v. X and others (Incorporated Council for Law Reporting, Dublin 1992) concerned a 14-year old girl who alleged that she had been raped by an older man who was a family friend. Her parents learned of the matter some weeks later and discovered that she was pregnant. The police were informed. The parents and their daughter decided to go to England for an abortion. They informed the police of this with a view to checking whether scientific evidence obtained from the foetus and used to identify the father would be admissible. The Director of Public Prosecution's advice was sought on the question of whether this would be possible and he, on learning of the intended abortion in England, informed the Attorney-General. He, in pursuance of his function as guardian of public right (a function independent from Government) sought an injunction to restrain the girl or her parents from interfering with the right to life of the unborn, and to restrain the girl from leaving Ireland for a period of nine months or from procuring or arranging an abortion. An interim injunction was granted by the High Court

and although at the time it was granted the girl and her parents were already in England they returned to Ireland without the girl having had an abortion.

40. By consent the hearing of the interlocutory application was treated as the hearing of the action. The High Court heard evidence that the girl had talked of killing herself on a number of occasions, in conversation with her mother and with policemen. She was seen by a clinical psychologist to whom she also spoke of killing herself. He concluded that she was capable of such an act, and that the psychological damage to her of carrying a child would be considerable and that the damage to her mental health would be devastating. The High Court (Costello J.) granted the orders sought. The Court held that in balancing the respective rights to life of the mother and the unborn child there was a real and imminent danger to the life of the unborn, and that the risk to the life of the young girl was much less and of a different order of magnitude than the certainty that the life of the unborn would be terminated if the order was not made (at p. 14). It also held that, in so far as it was argued that the orders made restricted the liberty of the defendant, if a constitutional right was being abused by exercising it to commit a wrong (as would be the case when travelling abroad to procure an abortion) the Court might restrain the wrongful act even though this might involve the curtailment of the exercise of the other constitutional right.

41. On appeal to the Supreme Court, the injunctions sought were refused. The court held that the true interpretation of Article 40.3.3° is that a termination of pregnancy is permissible if it is established as a matter of probability that there is a real and substantial risk to the life, as distinct from the health, of the mother, which can only be avoided by the termination of her pregnancy (p. 60). On the facts of the case the Court held that there was such a risk (p. 62). On the question of whether the court should have declined to make the order because it infringed the liberty, freedom of movement or freedom to travel abroad of the defendant, a majority of the court expressed the view, albeit in obiter dicta, that notwithstanding difficulties in proofs, supervision or enforcement of such injunctions, Article 40.3.3° required the courts in proper cases and in the exercise, as far as practicable, of their equitable discretion, to restrain by injunction the removal of the unborn from the jurisdiction so that the right to life of the unborn might be defended and vindicated. In such cases the right to life of the unborn would have to take precedence over other rights. Two of the five judges were of the contrary view, that injunctions having the effect of interfering with an individual's right to travel abroad should not be granted. Because the Supreme Court was able to give its view by reference to domestic law alone, it declined to give a decided view on arguments addressed by the defendant to the effect that the granting of the injunctions sought was contrary to European Community law. By doing so, the Court avoided the necessity to refer any question of Community law to the Court of Justice in Luxembourg. The Government is examining the implications of the Supreme Court's judgement.

42. In conclusion, the present state of Irish law appears to be as follows:

(a) Abortion remains not merely illegal but contrary to Article 40.3.3° of the Constitution, except in cases where as a matter of probability there is a real and substantial risk to the life, as distinct from the health of the mother (Attorney-General v. X).

(b) In such cases an abortion may lawfully be performed (Attorney-General v. X).

(c) In cases where abortion is unlawful, it is illegal to give information to pregnant women as to how and where they may obtain an abortion abroad, even in cases where the abortion would not be unlawful in the foreign country (Attorney-General (SPUC) v. Open Door).

(d) Similarly in cases where an abortion would be unlawful, a woman may be restrained by injunction from travelling abroad to seek an abortion (Attorney-General v. X). However, neither the Supreme Court nor the Court of Justice of the European Communities have had to consider whether such an order would be in conformity with European Community law.

(e) In cases which come to his attention where abortion is unlawful it appears that the Attorney-General is not merely entitled but required to bring the facts to the attention of the courts (Attorney-General v. X). Furthermore, it appears that other parties might also be so entitled to invoke the aid of the court (SPUC v. Coogan).

B. Paragraph 2 - Death penalty

43. There is no provision in Irish law for the death penalty. The penalty was abolished by the Criminal Justice Act, 1990 for all the offences for which the penalty remained a punishment under 1964 legislation. The last use of the death penalty was in 1954.

C. Paragraph 3 - Crime of genocide

44. Ireland is a party to the Convention on the Prevention and Punishment of the Crime of Genocide and the obligation in paragraph 3 of Article 6 of the Covenant not to derogate in any way from the obligations assumed under the Convention presents no difficulties.

D. Paragraph 4 - Pardon or commutation of death sentence

45. In the period between 1964 and 1990, there were nine convictions for offences which attracted the death penalty and in each of those cases (which involved the murder of a garda) the death sentence was commuted by Government order to a long sentence of imprisonment.

E. Paragraph 5 - Sentence of death on certain persons

46. This paragraph is not applicable since Ireland has abolished the death penalty (Criminal Justice Act, 1990). No cases in question arise under earlier legislation. Therefore the reservation with regard to Article 6, paragraph 5 made at the time of ratification by Ireland is no longer applicable.

F. Paragraph 6 - Delay on measures to abolish capital punishment

47. This paragraph is not applicable since Ireland has abolished the death penalty.

Article 7

48. Torture and cruel, inhuman or degrading treatment are contrary to the personal rights guaranteed to persons by Article 40.3 of the Constitution. (The State (C) v. Frawley, [1976] I.R. 365). There are extensive safeguards to ensure that persons who are held in garda (police) custody are not ill-treated (Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Siochana Stations) Regulations, 1987). The regulations impose a duty on the Garda to "act with due respect for the personal rights of persons in custody and their dignity as human persons, and to have regard for the special needs of any of them who may be under a physical or mental disability". There are provisions in the regulations concerning the conditions of custody, the conduct of interviews, notification of detentions to solicitors and other persons and the provision of adequate meals, rest periods and medical treatment for detained persons. The Gardai are required to maintain a full and detailed account of any period during which a person is in their custody. Responsibility for seeing that the regulations are adhered to has been placed on a single identifiable garda, i.e. the "member in charge" of the police station at the relevant time.

49. The Garda Siochana (Complaints) Act, 1986 provides procedures for dealing with complaints from the public about treatment by Gardai. An independent Garda Complaints Board operates under the legislation to investigate and adjudicate upon all complaints. The Board can impose disciplinary action including a fine, reduction in rank or dismissal of a garda.

50. A number of old statutes provide that a person may be sentenced to corporal punishment for certain offences but such sentences are no longer imposed. Legislation to provide for their abolition is in the course of being drafted. Legislation is also being prepared to enable Ireland to ratify the Convention against Torture and other cruel, inhuman or degrading treatment or punishment.

51. The Control of Clinical Trials Acts, 1987, provides statutory protection, including a requirement of informed consent, for persons, whether patients or healthy volunteers, who participate in clinical trials involving the administration of preparations or substances which may have pharmacological or harmful effects.

Article 8

52. The Slave Trade Act, 1824, made all operations in connection with the slave trade illegal, including dealing and trading in slaves. The Abolition of Slavery Act, 1833, abolished slavery in the then British colonies and freed any slaves and apprenticed labourers who had been brought into Great Britain or Ireland. In Ireland slavery or servitude would also now be incompatible with the Constitution and in particular Article 40.1 (equality before the law), 40.3.1 (personal rights of the citizen) and 40.4.1 ("No citizen shall be deprived of his personal liberty save in accordance with law"). The remedy of habeas corpus is available to vindicate this right (Art. 40.4.2).

53. Regarding forced labour, the Covenant makes an exception for imprisonment with hard labour, or work normally required of a person in detention in consequence of a Court order, or of a person during conditional release from such detention. Specific provision is not made in the Covenant for court orders requiring work to be performed where the appropriate sentence would otherwise have been one of imprisonment (as is now provided for under the Criminal Justice (Community Service) Act, 1983). However, this Act enables such orders to be made only with an offender's consent. There is a requirement for all convicted prisoners in Irish prisons to work within the prisons - see details below.

Article 9

A. Paragraph 1 - Right to liberty

54. The right to personal liberty is one of the fundamental rights which is guaranteed by Article 40.4.1 of the Constitution which provides as follows:

> "No citizen shall be deprived of his personal liberty save in accordance with law."

B. Paragraph 2 - Reasons for arrest

55. A person who is arrested must be informed at the time of the arrest of the reasons for the arrest unless the person concerned otherwise knows those reasons. The statutory regulations which have been made for the treatment of persons in Garda custody provide that arrested persons who are taken to a Garda station shall be informed without delay in ordinary language of the offence or other matter in respect of which they have been arrested (Regulation 8 - Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Siochana Stations) Regulations 1987).

56. Section 171 of the Defence Act, 1954 deals with the arrest of a person subject to military law. A person so arrested pursuant to this section, in accordance with the well established principle in common law, has the right to be informed of the reasons for his arrest, unless circumstances are such that he has constructive notice of such reason.

57. Rule 6 of the Rules of Procedures (Defence Forces) 1954 provides that a Commanding Officer investigate a charge within 24 hours (where practicable). No distinction is made between offences which have the attribute of a crime

and disciplinary infractions. Defence Force Regulations, A7 section 111, paragraphs 76 and 77, which outline the procedures governing the investigation of charges also affirm that they must be investigated without delay. In addition, section 144 of the Defence Act, 1954 makes it an offence where a person subject to military law unnecessarily detains any other person in arrest or confinement without bringing him to trial, or fails to bring that other person's case before the proper authority for investigation.

C. Paragraph 3 - Charging of arrested or detained persons, bail and early trial

Charges

58. The basic rule of law is that a person can be arrested only for the purpose of charging him in court as soon as practicable with the offence for which he has been arrested. There are two statutory exceptions to this rule:

(a) Section 30, Offences Against the State Act, 1939: A person may be arrested on reasonable suspicion of having committed an offence under the Act or which is scheduled by it for the time being, e.g. an offence under the Firearms Acts, the Explosive Substances Act, the Malicious Damage Act and the Conspiracy and Protection of Property Act. A person so arrested may be detained for up to 24 hours which may be extended for a further 24 hours on the direction of a Garda Chief Superintendent.

(b) Section 4, Criminal Justice Act, 1984: A person arrested without warrant for an arrestable offence which carries a possible sentence of five or more years imprisonment may be detained for up to six hours which may be extended for a further six hours on the direction of a Garda Superintendent. If that period runs after midnight the detained person may, if he wishes, be allowed up to eight undisturbed hours for rest during which the 12 hour period ceases to run.

If a person detained under either of those sections has not been charged in court before the expiration of the relevant period, he must be released forthwith; and he must be charged as soon as there is enough evidence to do so.

59. A person who is arrested, with or without a warrant, must be brought before the court as soon as practicable. This requirement, in a case where a person is arrested after 10 p.m., is deemed to be sufficiently complied with if the person is brought before the court before noon on the following day (section 15 of Criminal Justice Act, 1951 as inserted by section 26 of Criminal Justice Act, 1984).

60. The right of a person who is charged with a criminal offence to be adequately informed of the nature and substance of the charge has been held by the courts (State (Healy) v. Donoghue [1976] IR 325) to be a right protected by Article 38.1 of the Constitution which provides that "no person shall be tried on any criminal charge save in due course of law". Evidence must be served on a defendant in the course of the preliminary examination of the offence before the return for trial by the court which has jurisdiction to try the charge.

Early trial

61. The right to an early trial has been held to be one of the rights which is guaranteed to an accused person under Article 38.1 of the Constitution. (In re. Singer 97 ILTR 130).

Bail

62. The courts have held that it would be contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter upon which he has not been convicted save in the most extraordinary circumstances (The People (AG) v. O'Callaghan [1966] IR 501). The grounds on which bail may be refused are that there is a real danger that the accused will not attend court for trial or will attempt to pervert the course of justice by interfering with witnesses or jurors or destroying or concealing evidence. Bail cannot be refused merely because there is a likelihood of the commission of further offences by the accused while on bail.

D. Paragraph 4 - Inquiries into the lawfulness of detention

63. Paragraph 4 of Article 9 of the Covenant concerns the rights of an arrested person to take proceedings before a court to determine the lawfulness of his detention. This right is dealt with by Article 40.4 of the Constitution.

Habeas Corpus

64. Article 40.4.2 of the Constitution provides for a procedure of habeas corpus whereby, on a complaint being made to a judge of the High Court concerning the lawfulness of the detention of any person, the judge must forthwith inquire into the complaint and must order the release of the person unless satisfied that the detention is lawful. This procedure is available in any case in which a person is being detained and it is open to any person, whether acting on his own behalf or on behalf of another, to invoke the habeas corpus procedure.

E. Paragraph 5 - Right to compensation

65. Paragraph 5 of Article 9 provides that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. This right is provided for by the common law actions for damages for wrongful arrest and false imprisonment.

Judicial Review

66. The lawfulness of the proceedings leading to a detention may be challenged in judicial review proceedings before the High Court. In such cases the High Court examines the procedures leading to the detention to ensure that the appropriate rights of the detained person have been observed and respected. Failure to observe or respect these rights could render detention unlawful and the person concerned would have to be released.

Review of findings of insanity in criminal proceedings

67. Persons found to be insane in the course of criminal proceedings may be detained under Irish law. In the case of a person who is found unfit to plead to an indictable offence due to insanity, the detention of the person is in accordance with section 17 of the Lunacy (Ireland) Act, 1821. In the case of a person charged with an indictable offence who is found to have committed the act alleged but to have been insane so as not to be responsible for his actions at the time, the detention is in accordance with section 2 of the Trial of Lunatics Act, 1883. In both cases the person is detained indefinitely at the discretion of the executive.

68. Persons detained following a finding of insanity in criminal proceedings have available the remedies of habeas corpus and judicial review. In addition, legislation to reform the law in this area is under preparation and, in this regard, consideration is being given to new procedures for a review of the grounds for the continued detention of a person in this situation. As an interim measure, the Minister for Justice has established a three member Advisory Committee to advise him on whether persons found guilty but insane, and who have applied for release, are suffering from any mental disorder such as to warrant their continued detention in the public and private interest. Two cases have so far arisen for consideration by the Committee and their advice has been followed by the Minister for Justice in each case.

Review of detention under mental treatment legislation

69. Under existing mental treatment legislation (Mental Treatment Acts, 1945 to 1961) persons of unsound mind and persons suffering from addiction who require treatment may be detained in a psychiatric hospital following medical certification. The principal remedies for any possible improper detention of patients are:

(a) Person or someone acting on his or her behalf may apply to the courts for a judicial review of the decision to detain;

(b) Habeas Corpus - the patient, or someone acting on his or her behalf, may apply to the High Court for an order that he be released on the ground that he is being unlawfully detained;

(c) Any person may apply to the Health Minister for an order for the examination of a detained patient by two medical practitioners, and the Minister on consideration of their report, if he thinks fit, may direct the discharge of the patient;

(d) Current mental treatment legislation provides for a medical Inspector of Mental Hospitals who must visit all mental hospitals at stated intervals. The Inspector has a duty to give special attention to the state of mind of any patient detained where the propriety of detention is doubtful, or when he is requested by the patient, or by any other person, to do so. The Inspector must also ascertain whether the periods of detention of any temporary patients (i.e. patients detained for periods of six months subject

to a maximum of two years), have been extended since the Inspector's previous visit; and if so, he must give particular attention to the patients concerned;

(e) Any relative or friend of a person detained may make application for the discharge of a patient to their care. The application must be granted unless the medical officer of the hospital certifies that the patient is dangerous or otherwise unfit for discharge, in which event an appeal against refusal of the application lies to the Minister for Health;

(f) Every health board must appoint a visiting committee, whose duties include that of hearing the complaints of any patient. If requested to do so, they must see the patient in private;

(g) When the resident Medical Superintendent of a hospital extends the period of detention of a temporary patient, he must advise the patient and the applicant for the original reception order that either of them can send to the Inspector of Mental Hospitals an objection to the extension. On receipt of an objection, the Inspector must take such steps as he deems necessary to be satisfied of the propriety or otherwise of the continued detention of the patient. If it is felt that the patient should not be detained further, the fact must be reported to the Minister, who may order the discharge of the patient;

(h) Every patient has the right to have a letter forwarded, unopened, to the Minister for Health, the President of the High Court, the Registrar of Wards of Court, the Mental Hospital Authority, a visiting committee of a District Mental Hospital or the Inspector of Mental Hospitals. The Minister may arrange for an examination of a patient by the Inspector of Mental Hospitals and may direct discharge where justified. The President of the High Court may require the Inspector of Mental Hospitals to visit and examine any patient detained as a person of unsound mind and to report back;

The Department of Health is currently reviewing all aspects of mental health legislation, following which it is the intention to bring forward proposals to update the existing law.

Article 10

70. At the time of ratification, Ireland made the following reservation with regard to Article 10, paragraph 2 of the Covenant:

> "Ireland accepts the principles referred to in paragraph 2 of Article 10 and implements them as far as practically possible. It reserves the right to regard full implementation of these principles as objectives to be achieved progressively."

71. Ireland has a current prisoner population of approximately 2,150 of which approximately 2 per cent are females. The number of prisoners at any one time is about 62 per 100,000 of the general population. While the level of imprisonment has grown over the past decade, the present rate per 100,000 of the general population remains consistent with the average for Western European States.

72. Prisoners are accommodated in a total of 12 custodial institutions. The size of the institutions is relatively small by international comparison, the largest accommodating approximately 600 prisoners, and the second largest 320. The institutions are operated and managed by an unarmed civilian prison staff, the basic grade of Prison Officer being recruited directly from the civilian population. The total number of prison staff of all grades is 2,250 which gives one of the highest staff to prisoner ratios in the world. This high ratio is to some extent a product of the relatively small size of our institutions, which do not, by definition, offer the kind of economies of scale available in large institutions. It does, however, also reflect a policy of operating relatively relaxed regimes which involve liberal out-of-cell time and constant close personal contact between prisoners and custodians. Internal and external security is maintained by unarmed prison staff, except in the case of one institution (prisoner population 180) where, because of the perceived security risk of some prisoners, back-up perimeter security is provided by police assisted by armed military personnel. Back-up perimeter security is also provided by police at another institution for the same reasons as above (prisoner population 150). Of the 12 institutions, 8 are traditional "closed" institutions accommodating about 1,800 prisoners, 3 are "open" centres which operate with minimal internal and perimeter security and 1 is "semi-open" with traditional perimeter security but minimal internal security. All female prisoners, totalling not more than 50 at any one time, are accommodated in separate parts of two of the closed institutions.

73. Legislation governing the operation of the prison system comprises a variety of Prison Acts dating from the nineteenth century, specifically the Visiting Committee Act, 1925, the Criminal Justice Act, 1960, and various Statutory Rules and Regulations the most important of which are the Rules for the Government of Prisons, 1947.

74. The Irish prison system aims to provide regimes which treat prisoners with humanity and dignity and afford them every reasonable assistance towards their reformation and social rehabilitation. The most important features of the regimes for prisoners are set out in the following paragraphs.

Accommodation and location

75. Three of the eight "closed" institutions date from the nineteenth century and have some deficiencies. Extensive modernization and refurbishment is ongoing to adapt the accommodation in them to modern living standards. Single cell accommodation is provided where possible in these institutions. There is also a small number of larger association cells meant to accommodate three or more prisoners. Three of the other "closed" institutions are more modern with two having single cell accommodation, and the third having dormitory accommodation. Space for work, recreation, etc. is generous. The seventh "closed" institution was recently opened (1989). It provides 320 places and consists of 20 units opening off spine-corridors. Every unit has 16 rooms designed for single occupancy and has its own day-rooms for indoor association. Every room has a washbasin and lavatory. The "semi-open" unit is a purpose-built custodial institution. It has modern workshops, good indoor recreation space, and sleeping accommodation in good quality single bedrooms.

76. The three "open" centres between them have accommodation for about 200 offenders. Conditions are good, with extensive work training and education facilities in them. Sleeping accommodation in two of the "open" centres is in dormitories, and in bedrooms for two or three in the other centre. The three open centres have spacious grounds with full-sized playing fields.

77. A guiding principle in the placement of prisoners is that they are detained in an institution as near to their homes as possible to facilitate visits from relatives and friends. Accommodation near home is not always possible, however, especially with prisoners convicted of terrorist type offences who must, for security reasons, be contained in specialized institutions.

Time out of cell

78. With a ratio of over one prison officer per prisoner, Ireland's prison regimes have been organized so as to maximize a prisoner's time out of his cell. Prisoners in closed institutions are out of their cells, on average, nine hours in the day (with the exception of a small number of prisoners who, for security reasons, or for their own safety, cannot be given the same regime).

Daily time-table - "open" institutions

79. The daily regime in an "open" centre is more relaxed. From the time they rise until bedtime, inmates have practically full time free association with access to a wide range of activities both indoor and outdoor. The traditional lock-up system does not apply.

Daily time-table semi-open institutions

80. The traditional lock/unlock does not apply in the semi-open institution. A prisoner rises at about 8 a.m. and until he finally retires at about 10 p.m., his room remains open and he is under no obligation to return to it during that period. Most of his day is spent in one of the workshops or at education classes, i.e. from about 9 a.m. until about 5 p.m., with meal breaks in between. Following that there is generous recreation time with a full range of activities including television, snooker, squash, volleyball etc. until bedtime.

Diet

81. A healthy well balanced diet is supplied to all persons in custody in accordance with prison regulations. A change of diet can be obtained following approval of the Medical Officer. All the prisons have in 1991 introduced a 14-day cycle of menus. Consideration is presently being given to introducing vegetarian meals as another option for prisoners.

Hygiene, clothing and bedding

82. Prisoners are not required to wear a uniform, but are supplied with a range of clothing in fashion in the community. Clothing may be changed twice weekly. In certain circumstances a prisoner may wear his own clothing. If permission for this is given the prisoner is required to have sufficient for a change. Changes of underclothing are supplied to all prisoners. All prisoners are entitled to wash daily and shower at least once per week. Cell bedding usually comprises bed mattress, blankets, one pillow, pillowslip and sheets.

Sanitation

83. In the open and semi-open institutions, prisoners have ready access to toilets at all times. One older institution and the newest closed institution (Wheatfield) has in-cell sanitation. Refurbishment of the other closed institutions will include in-cell sanitation as standard. The main women's prison (40 prisoners) has in-cell sanitation.

Welfare

84. There are Probation and Welfare Officers attached to each institution. The Welfare Officers deal with a wide range of personal and family problems for prisoners and provide counselling for alcohol, drugs, and other social problems. They are available for consultation with families on request.

Education

85. Along with work-training, education comprises one of the two main activities available within the prisoner's day. Where space and resources allow, a broad programme of education is offered to prisoners, consisting of the main school subjects, adult basic education, creative activities (such as art, drama, music and writing), social education and physical education. The aims are to help prisoners cope with their sentences and prepare for release and, particularly, to offer them the opportunity to discover and develop new potential within themselves. Such personal development has special urgency in a prison context since the great majority of those in prison have had very limited educational opportunities in the past. The methods and approaches used are drawn from adult and community education and participation is voluntary. Teachers from eight Vocational Education Committees provide the major part of the education service to prisoners. There are now about 121 teachers (or 97 whole time equivalents) working in the prisons. Other agencies make important contributions to prison education throughout the country also, notably the Open University (run by the BBC) who provide a wide range of degree courses and the Arts Council who provide writers' and artists' workshops, conducted by recognized writers and artists. Overall management of the prison education service is provided by the Department's Coordinator of Education.

Course and activity developments

86. Only a minority of those in prison find that the conventional set courses used for State examinations meet their needs. The greater part of prison education entails teachers working out their own courses and activities with their students, paying close attention both to the prisoners' needs and to what the best practice in adult education at large has to offer. Thus the shape of the curriculum in prisons has evolved over the years, such that many subjects in prisons have a prominence that would be quite untypical in education on the outside. The expressive or creative arts are one example; debates and structured discussion are another.

87. The Open University degree programme, which is available in all the prisons, offers a very wide range of well-designed courses and is of great benefit to many of the more academically-inclined prisoners, especially those with long sentences to serve. When this facility was introduced to the prisons in 1985 it represented a milestone for prison education, but was also of wider significance as it represented the first occasion the Open University made its full range of degree courses available to people in the State. The advent of the Open University revealed a keen interest in the Social Sciences and in Sociology among prisoners. While Sociology has been a successful subject taught by VEC teachers for some years in two places, it had not been taught in the other prisons. It has since been introduced to other prisons and has proved to be very popular. Typing is another new subject now running successfully in several prisons. Drama is also emerging as an increasingly important activity in prisons, both in its own right and as a method of enhancing the value of other subjects.

Work and work training

88. There is a requirement on convicted prisoners to work. A prisoner may be excused on medical advice or for attendance at educational courses. The work available includes carpentry, crafts, upholstery, leather work, engraving, spraying, shoe-making, mat-making, bag-making, glove-making, tailoring, cleaning, woodyard, stores, special work parties and working with tradesmen.

Work-training programme

89. Great emphasis is placed on training in skilled or semi-skilled work. Training activities are chosen to give as much employment as possible but also to give opportunities to acquire skills which will help prisoners to secure employment on release. Many of the activities are also chosen with a view to providing products and services for the prisons.

Engineering

90. Specialist industrial training is provided in the semi-open institution. It provides courses in welding, machining, general engineering, electronics, introduction to industry and fabrication. Training activities are integrated with special educational courses there.

Recreation

91. Prisoners are free to recreate at weekends, in the evenings and when not attending work or educational classes. Facilities include television, table games and library facilities. There is increasing use being made of gym activities and outdoor games within the prisons. As many offenders as possible are involved at least for a few sessions each week. The activities are organized in close conjunction with the educational programme at the institutions. Gym instruction and supervision is provided by prison officers.

Medical service

92. Part-time Medical Officers are assigned to each prison and place of detention, with the exception of the open centres where local doctors attend on a fee per visit basis. Medical Officers are responsible, in general, for the medical welfare of prisoners. They are also required to regularly inspect food, sanitation, kitchens, bedding, ventilation, etc. Medical Officers are assisted by prison medical orderlies whose functions are to organize the Medical Officers' clinics and medicines. Orderlies are specially selected prison officers who receive some training in nursing and first-aid. To ensure that offenders' medical needs are being met at all times, round-the-clock Medical Orderly cover is being provided in all closed prisons. Additional training for existing and new Orderlies is being arranged to improve their qualifications and skills.

93. A Report of a Committee of Inquiry into the Penal System (1985) recommended that the provision of an adequate overall health service in prisons and places of detention needed strong central direction. It recommended that this should be provided by a Medical Director. The recommendation was accepted and a Director of the Prison Medical Service has been appointed. With the advent of the AIDS pandemic, a special accommodation unit is being built in the main prison complex for those suffering from AIDS and other infectious diseases. It will be especially equipped to enable medical attention to be given which is appropriate to the special needs of prisoners.

Psychiatric service

94. This service is provided to the prisons and places of detention by visiting psychiatrists employed by Regional Health Boards. Psychiatrists from the Forensic Service of the Eastern Health Board at the Central Mental Hospital, Dundrum provide regular weekly counselling and treatment sessions at the Dublin prisons. They also attend monthly liaison meetings in a number of institutions to consider and make recommendations specifically in the cases of offenders who have psychiatric problems. Offenders who, in the opinion of the psychiatrist and the Prison Medical Officer are in need of in-patient psychiatric treatment, may be transferred by Ministerial Order to either the Central Mental Hospital or a District Mental Hospital. A day centre run by the C.M.H. outside the prison is available to provide counselling and care support to prisoners after their release from prison. Some 250 persons, about 30 of whom are females, are transferred to the Central Mental Hospital annually for treatment. The majority of them are diagnosed as suffering from depression and some as being suicidal.

Psychological service

95. The Department of Justice has a complement of four psychologists for work in the prisons. Three of these are involved mainly in clinical work while the fourth provides a research facility. Psychologists attend regular review meetings in major institutions. Psychologists work with prisoners identified as having serious psychological problems and/or who present serious management problems, e.g. by reason of aggression, self-damaging behaviour, etc. They also provide reports to the Courts for prisoners on remand. The main thrust of work with offenders is by way of counselling and psychotherapy. This represents an effort to increase the offender's awareness of his problems and to provide alternative strategies for dealing with his difficulties. Both individual and group psychotherapy approaches are provided. The effort of the service is directed primarily to those with the greatest need. One such group of offenders are those who have been identified as being HIV positive and they take up a significant proportion of the time of psychologists. This work involves contact with the offender before he is tested, just after he has been tested and found positive, counselling on coming to terms with being in prison with a life-threatening disease and preparing for life following release. Psychologists are also involved with the selection, induction training and developmental training of Prison Officers.

Religion and chaplaincy services

96. Full-time Roman Catholic chaplains are attached to many prisons and places of detention. Part-time chaplains are assigned to the others. Part-time chaplains for other religious denominations are also provided. As well as catering for religious needs, the chaplains support prisoners during their periods of imprisonment by way of counselling, etc. The majority of the prison population are Roman Catholic. The Chaplain's work also involves close liaison with other services in the prison, with parochial clergy, offenders' families and outside agencies, including former employers, and attendance at regular meetings in institutions to review offenders' cases.

Contact with relatives and friends and visiting arrangements

97. In general, each prisoner is entitled to at least one visit per week but, in practice, visits are allowed more frequently where circumstances permit. Visits in open centres are unsupervised and may be granted on demand.

Letters

98. Persons serving sentences are generally allowed to send out two letters per week. Extra letters to family or solicitors may be allowed on request. A prisoner awaiting trial may send out as many letters as he/she likes. There is no limit on the number of letters which may be received.

Remission

99. Standard remission on fixed sentences is 25 per cent. This is automatically given and may be reduced only for bad conduct.

Parole and temporary release

100. Under the Criminal Justice Act, 1960 the Minister for Justice may authorize releases at any stage of a sentence. All of these releases have standard conditions which include the obligation to keep the peace, be of good behaviour and be of sober habits. Other conditions are added, as appropriate, such as a requirement to report to the police, to be supervised by a Welfare Officer or to reside at a prescribed hostel. A person breaching any of these conditions is liable to rearrest and return to prison to serve the remainder of the sentence. The criteria by which cases are assessed for release include the nature of the offence, the offenders previous criminal history, attitude while in custody, length of sentence served and a police assessment of the risk, if any, which may be posed to the community by a particular release. An overriding concern when assessing cases for release is the protection of the public. There are about 300 prisoners on temporary release at any one time.

Visiting committees

101. The Prisons (Visiting Committees) Act 1925 provides for the appointment by the Minister for Justice of Visiting Committees to prisons and places of detention. The Prisons (Visiting Committees) Order 1925 sets out the rules under which Committees operate. A Visiting Committee is an independent statutory "watchdog" on behalf of the public to oversee the treatment of prisoners. Prisoners have free access to the Visiting Committees and may voice any complaints or objections to them. Visiting Committees are required to report any abuses to the Minister. Each year, they make an Annual Report to the Minister which is subsequently published. They carry out surprise inspections, usually on a monthly basis.

Separation of accused Prisoners

102. Rule 192 of the Rules for the Government of Prisons 1947 provides that "prisoners awaiting trial shall be kept apart from convicted prisoners, and while attending church and at other times shall, if possible, be placed so that they may not be in view of the convicted prisoners".

Segregation

103. In practice, every effort is made to keep accused prisoners separate from convicted prisoners. However due to pressure on accommodation, it is not always possible to achieve this all of the time. Mixing may occur during exercise and recreation periods.

Separate treatment appropriate to their status as unconvicted persons

104. The position of accused persons in custody is respected by the prison regime. It recognizes that they have not been convicted of any offence and strives to ensure that they are given preferential treatment and status. This treatment status includes:

(a) separate accommodation where possible (as outlined above),

(b) no requirement to work,

(c) entitlement to a visit every day, except Sunday. (Convicted prisoners are entitled to one visit per week),

(d) separate church and devotional facilities,

(e) the facility to continue to manage their own private affairs,

(f) a separate exercise yard as far as practicable,

(g) wearing of their own (private) clothes if they so request.

Juvenile offenders

105. Male juveniles aged 16 years and over and females aged 17 years and over may be committed on remand or under sentence to prisons and places of detention operated by the Department of Justice. Offenders under those age limits are committed to institutions operated by the Department of Education. In very exceptional cases a juvenile aged 15 to 16 (male) or 15 to 17 (female) may be committed to a Department of Justice facility if certified to be of so unruly a character as to be unsuitable for a Department of Education facility. Arrangements are made as far as practicable to keep young offenders separate from adult prisoners. This is easier in the case of males because there are two institutions (one closed and one open) given over exclusively to them, as well as segregated parts of the newest institution. It is not practicable, because of small numbers, to provide the same separation facilities for females.

106. Special care is taken in the case of accused young persons to apply conditions appropriate to their status and in accordance with the arrangements already described in this document for accused persons generally. In the case of convicted young persons special emphasis is placed on giving them maximum access to education and work training and a regime which is as liberal as possible. Subject to that, the general arrangements as described in this document for prisoners in general apply to young persons also.

Reformatory Schools for juvenile offenders

107. It would generally be regarded as preferable, if at all possible, to deal with young people in conflict with the law by methods short of committal to residential care. When, however, the Courts consider that a young person requires residential care, such a person may be committed to one of the special schools established for this purpose. The legislation governing this area is the Children Act, 1908 and subsequent amendments to this Act.

108. Currently there are two industrial schools and three reformatory schools providing long-term custodial places for young offenders. The two existing industrial schools provide accommodation for 130 boys and are certified as industrial schools by the Minister for Education. These schools accept boys under 15 years of age. The boys must spend a minimum of one year at these schools which are residential. Both schools are owned by the State but are operated on its behalf by religious orders who have been involved in caring for young offenders for many years. The Reformatory Schools (52 places for boys and 8 places for girls) are certified by the Minister for Education which

enables them to take boys/girls between the age of 12 and 17 years. In addition, these centres have short-stay remand and assessment places for 14 boys and 8 girls and for this purpose are also certified by the Minister for Justice as places of detention.

109. Present policy is that the industrial schools, which are of a more "open" nature, would provide for the younger boys and the reformatory school, which operates as a secure system, would provide in the main for the older boys who, being either too disruptive or being persistent absconders, were unable to be coped with by the "open" schools. Decisions regarding appropriate custodial arrangements are normally made by the Courts following a detailed assessment of each individual case. Such assessments are conducted over a three week period in designated residential remand for assessment centres, of which there is one for boys and one for girls. The aim of these schools is that boys and girls be allowed to grow and mature in an environment which is more conducive to producing a responsible adolescent than that which prevails in the children's home settings and to intervene positively in their lives and thereby break the delinquent tendencies that they have acquired. In all cases the children are catered for in a professional manner and a full range of professional services is made available to meet their needs.

Article 11

110. Article 11 prohibits imprisonment "merely on the ground of inability to fulfil a contractual obligation". Such imprisonment has not been a feature of the Irish legal system since debtors' prisons were abolished in the nineteenth century. Irish law does not authorize the imprisonment of a person for mere failure to pay a civil debt. A person may be committed to prison for failure to comply with a court order to make certain payments in discharge of a debt, but an order for imprisonment may not be made if the debtor shows to the satisfaction of the court that his failure to pay was due neither to his wilful refusal nor culpable neglect (Enforcement of Court Orders Acts, 1926 and 1940).

Article 12

111. Both the right to travel and the right to freedom of movement within the State have been identified by the Supreme Court as personal rights guaranteed by our Constitution and consequently these rights appear to be fully recognized in our domestic law in so far as citizens are concerned.

Aliens

112. The ability of aliens to invoke constitutional protection particularly as regards basic fairness of procedure is consistent with the control of the entry of aliens into the State, their departures, and their activities and their duration of stay within the State. It has been held in the case of Osheku v. Ireland [1986] (ILRM) 330 that the control of aliens "is an aspect of the common good which has been recognized universally and from earliest times".

113. At a statutory level aliens law is contained in the Aliens Act, 1935 (No. 14 of 1935), The Prisoners of War and Enemy Aliens Act, 1956 (No. 27 of 1956), The European Communities Act, 1972 (No. 27 of 1972), and various Statutory Orders and Instruments made under these Acts. The most significant Orders and Instruments regulating foreign nationals are the Aliens Order, 1946 (No. 395 of 1946) and the Aliens Regulations, 1977 (No. 393 of 1977) which is applicable where persons are nationals of member States of the European Communities (for the purpose of these Orders and Instruments, "alien" does not include a person born in Great Britain or Northern Ireland (Article 2 of the 1975 Order and para. 1 (a) of the First Schedule to the 1977 Regulation).

114. Under the 1935 Act the Minister for Justice has a range of powers in relation to the control of aliens which he may exercise by creating statutory orders (called aliens orders). The implementation of the Aliens Act, 1935, including the orders made thereunder, has established a regime where the State does not control or restrict in any way the movement of aliens who are lawfully within its territory, except to the extent necessary to comply with requirements in regard to registration and obtaining work permits. These restrictions are imposed by Article 11 of the 1946 Order which requires an alien to register with the officer of the registration district in which he is resident and to keep this officer advised of any changes or intended changes in his circumstances or place of residence, and by Article 4 of the 1946 Order (as inserted by Article 3 of the 1975 Order) whereby an alien may not enter the service of an employer in the State save in accordance with a permit issued to the employer by the Minister for Labour. These limited restrictions which are considered necessary are provided for in paragraph 3 of Article 12 of this Covenant.

115. The right of an alien to choose a residence in the State is not limited in any way (see earlier comments on this subject) and, in this respect, section 3 of the Aliens Act 1935 gives an alien the same rights to take, acquire, hold and dispose of real and personal property of every description in the State, or subject to the laws of the State, as those that are held by citizens of the State. No restrictions are imposed on aliens wishing to leave the State except for reasons consistent with Article 12.3 of the Covenant, for example where the alien is serving a prison sentence following a criminal conviction.

116. In the context of membership of the European Community, it needs to be emphasized, however, that the single term "alien" as used in the Covenant may no longer be appropriate to describe the categories of persons who fall into the category of not being Irish citizens. In terms of Articles 12 and 13 of the Covenant, European Community nationals in Member States other than their own will increasingly be more readily comparable with citizens rather than aliens. Article 7 of the E.E.C. Treaty requires that nationals of Member States must be treated in the same way as (Irish) citizens in respect of Treaty subject-matters. Nationals of Member States benefit from Articles 48 and 52 of the E.E.C. Treaty on the free movement of workers and on the freedom of establishment. Article 48 and the regulations made under it, notably Regulation No. 1612 of 1968, apply to employees and to those seeking employment in any Member State, and also to their dependants. These persons are entitled to go to and to reside in the State where the job in question is

and to remain there permanently after the job has ended, if they are of pensionable age. However, their freedom of movement is subject to the State's rules regarding public security, public order and public health.

Article 13

117. The law relating to the removal of an alien from the State is related logically to the general law on the control of aliens as well as the special position of European Community nationals which has already been referred to in the context of Article 12. In giving effect to our Community obligations, the European Communities (Aliens) Regulations, 1977 provide that a citizen of a Member State of the European Communities lawfully within the State may be required by the Minister for Justice to leave the State if the Minister is satisfied that the person's conduct is such that it would be contrary to public policy or would endanger public security to permit the person to continue to remain in the State (Regulation 14 of the European Communities (Aliens) Regulations, 1977). A person due to be deported under this provision is entitled under Article 16 of the Regulations to appeal the Minister's decision to an authority appointed by the Minister, unless the Minister certifies that his doing so would endanger the security of the State. It is the practice for the Minister to appoint a member of the judiciary as the authority on a case by case basis. Administrative practice in relation to non-EC nationals parallels the above-mentioned 1977 Regulations. Aliens lawfully in the State may be deported only in accordance with Article 13 of the 1946 Aliens Order and are informed in writing of the intention to remove them and are free to make submissions, stating the reasons against the proposed expulsion, to the competent authority, that is the Minister for Justice. Of course, the Minister is free to nominate an outside person or body to consider such submissions. Moreover, aliens involuntarily removed from the State may apply for judicial review of the decision of the Minister.

118. A further statutory provision applicable to all aliens is set out in section 5 (5) of the Aliens Act, 1935 which provides that aliens who have been ordinarily resident in the country for more than five years and who are either employed, are in business, or practise a profession here may be deported only where they have served or are serving a term of imprisonment, where a court has recommended their deportation or where the Minister has given three months written notice of an intention to order their deportation.

Article 14

119. At the time of ratification Ireland made the following reservations with regard to Article 14 of the Covenant:

> "Ireland reserves the right to have minor offences against military law dealt with summarily in accordance with current procedures which may not, in all respects, conform to the requirements of Article 14 of the Covenant. Ireland makes the reservation that the provision of compensation for the miscarriage of Justice in the circumstances contemplated in paragraph 6 of Article 14 may be by administrative procedures rather than pursuant to specific legal provisions."

A. Paragraph 4 - Equality before the courts; fair and public hearings

120. The Constitution contains specific provisions safeguarding a person's equality before courts or tribunals and a person's right to a fair and public hearing by an independent court on a criminal charge. In particular, the Constitution provides that:

> "Article 34.1. Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public."
>
> "Article 35.2. All judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and the law."
>
> "Article 38.1. No person shall be tried on any criminal charge save in due course of law."
>
> "Article 40.1. All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function."

121. Cases where criminal charges are heard otherwise than in public are strictly limited and fulfil the criteria set out in paragraph 1. For example, section 11 of the Criminal Law (rape)(Amendment) Act, 1990 provides that the public shall be excluded from proceedings relating to a rape offence or an offence involving aggravated sexual assault. This is done to protect the private life of the complainant. The verdict or decision and the sentence, if any, must however be announced in public. The Press are not generally excluded from such proceedings but they may not publish or broadcast material which might reveal the identity of the complainant (or, in the case of rape, of the accused unless and until he is found guilty).

B. Paragraph 2 - Presumption of innocence

122. The presumption that an accused person is innocent until proven guilty is a fundamental principle of Irish law. (People (AG) v. O'Callaghan 1966 I.R. 501)

C. Paragraph 3 - Procedural matters

123. The following sub-paragraphs set out certain guarantees of fairness of procedure, which, in their various aspects, have been held by the courts to be inherent in the requirement of Article 38.1 of the Constitution that no person shall be tried on any criminal charge save in due course of law:

(i) Clause (a) of paragraph 3:

The courts have made it clear that a person must be given details of any charges against him (State (Gleeson) v. Minister for Defence 1976 I.R. 280) and that the proceedings must be in a language understood by the accused (State (Buchan) v. Coyne 70 ILTR 185).

(ii) Clause (b) of paragraph 3:

The right to prepare a defence to a criminal charge and the right to consult and be represented by counsel has been asserted by the courts (State (Healy) v. Donoghue 1976 I.R. 325).

(iii) Clause (c) of paragraph 3:

The right to be tried without undue delay is an accepted principle (In re. Singer 97 ILTR 130).

(iv) Clause (d) of paragraph 3:

The right of a person charged with an offence to have the charge tried in his presence, to defend himself in person or through counsel and to receive, where necessary, legal assistance without payment are accepted principles (State (Healy) v. Donoghue 1976 I.R.325). In relation to clause (d) of paragraph 3, the Committee's attention is drawn to the Irish Criminal Legal Aid Scheme.

Criminal Legal Aid Scheme

General: Under the Criminal Justice (Legal Aid) Act, 1962 and the Regulations made under it, free legal aid may be granted, in certain circumstances, for the defence of persons of insufficient means in criminal proceedings. The grant of legal aid entitles the applicant to the services of a solicitor and, in certain circumstances, counsel, in the preparation and conduct of his defence or appeal. The assignment of a solicitor to a successful applicant is a matter for the Court granting the legal aid and is normally made from a panel of solicitors who have indicated their willingness to undertake legal aid work. Where the assistance of counsel is allowed, the solicitor assigned may instruct any member of the Bar whose name is included in a similar panel of counsel. An applicant for legal aid must establish to the satisfaction of the Court that his means are insufficient to enable him to pay for legal aid himself. The Court must also be satisfied that the interests of justice require the granting of legal aid, but where the charge is one of murder or where an appeal is one from the Court of Criminal Appeal to the Supreme Court, legal aid is granted solely on the grounds of insufficient means.

Eligibility: The Supreme Court judgement in the 1976 case of the State (Healy) v. Donoghue established that an accused person of insufficient means has in certain circumstances - for example when faced with changes which could result in his imprisonment - a constitutional right to legal aid and is entitled to be informed by the Court in which he is appearing of this possible right. It was also made clear that if legal aid is granted, the case cannot proceed unless the accused is actually represented.

Choice of Solicitor: The first legal aid Regulations made in 1965 provide that the Court granting legal aid must take the representations of the accused person into account in assigning a solicitor. As a result, since the Act came into force in 1965, it is understood that persons granted legal aid by the courts have had the solicitor of their choice assigned to them in the majority of cases.

Payment for legal aid: There is no provision in the present Regulations governing the Criminal Legal Aid Scheme for the payment of a contribution by a person in receipt of legal aid towards the cost of his defence.

(v) Clause (e) of paragraph 3:

The right of an accused to call witnesses on his own behalf and examine or have examined witnesses against him is an accepted principle (State (Healy) v. Donoghue 1976 I.R. 325).

(vi) Clause (f) of paragraph 3:

The right of an accused to have the free assistance of an interpreter if he cannot understand or speak the language used in court is accepted. Interpreters are provided at State expense in criminal cases when requested.

(vii) Clause (g) of paragraph 3:

An accused cannot under Irish law be compelled to testify against himself or to confess guilt.

D. Paragraph 4 - Procedures for juveniles

124. The Criminal Justice Act, 1984 (Treatment of Persons In Custody in Garda Siochana Stations) Regulations, 1987 constitute a comprehensive code on the treatment of persons in Garda custody. In addition to general rules applicable to all persons in custody, special provision is made in respect of persons under 17 years of age. In particular, it is provided that, where such a juvenile is arrested: the juvenile, in addition to being given information on his rights (such as consulting a solicitor) is informed that a parent or guardian is being advised of the arrest and is being requested to attend at the station without delay; a parent or guardian is informed of the fact of custody, of the reason for the custody, of the entitlement to consult a solicitor, and the parent or guardian is asked to attend at the station without delay; in the event of the parent or guardian being unavailable, the juvenile may name another person to be contacted; in general, and subject to limited exceptions such as unavailability, the juvenile must not be questioned or asked to make a written statement unless a parent or guardian is present. If despite every effort, a parent, guardian or relative is not available, the juvenile may be interviewed only if some other responsible adult (not a Garda) is present, unless this is not practicable.

125. The Committee's attention is drawn to the Garda Juvenile Liaison Officer Scheme (JLO) described in the following sub-paragraphs:

Garda Juvenile Liaison Officer Scheme

(i) Nature of scheme:

This is an extra-statutory scheme introduced in the 1960s to divert young offenders from the judicial system. It provides for cautioning and supervising juveniles who commit minor crimes as an alternative to prosecuting them. It is a requirement of the scheme that the juvenile admits the offence,

the victim raises no objection to the decision not to prosecute and the parents or guardians agree to cooperate with the Gardai in accepting advice about the child.

(ii) Functions of the scheme:

The function of the Juvenile Liaison Officer is to maintain contact with any juvenile assigned to the JLO scheme, with the intention of weaning him away from involvement in crime. The juvenile may be one who has committed an offence and having been warned, has been informally committed to the care of the Officer. The Juvenile Liaison Officer may also be given the care and guidance of a young person who, though not known to have committed an offence, may be regarded as a potential delinquent by reason of unsatisfactory behaviour, such as persistent truancy, running away from home, staying out late at night, being unruly at school or at home, behaving in a disorderly manner, or frequenting undesirable places. Such cases would come to notice through teachers, parents, school attendance officers, or other Gardai.

(iii) Number of cases being dealt with under the scheme:

The number of new cases which came within the scope of the scheme in recent years is as follows:

	Total	Dublin Metropolitan Area only
1985	3 000	1 155
1986	2 718	1 306
1987	3 709	1 255
1988	3 032	1 108
1989	2 716	928

The scheme commenced in 1963. An indication of its impact is that the number of juveniles convicted, as a proportion of the total number of convictions has dropped from 47 per cent in the early 1960s to 20 per cent in 1988.

(iv) Number of Juvenile Liaison Officers:

The current Juvenile Liaison Officer strength is 83. They are assigned to 37 major centres of population as follows:

Location	No. of Members assigned
Dublin	38
Cork	4
Limerick	2
Galway	2
Kilkenny	2
Waterford	2
Other provincial areas	33 (1 Garda at each centre)

(v) Reform of the scheme:

The Minister for Justice recently announced the implementation of the following reforms to improve the effectiveness of the JLO scheme and to ensure that this option is available for all suitable young offenders:

(a) Establishment of a National Juvenile Liaison Office to oversee the operation of this service throughout the State.

(b) Reform of the reporting and supervision arrangements for Juvenile Liaison Officers. The Garda management at District Officer level (generally Garda Superintendents) are being given greater responsibilities in this area.

(c) Variation of the duration of the period of supervision by Juvenile Liaison Officers of their young charges. Examination of this issue has shown that a more flexible approach was required in this area. From now on, the approach will be more closely tailored to the needs of the young people concerned.

(d) Weekend and evening work by Juvenile Liaison Officers

Given the family situation of the young people involved in this scheme, the Garda Commissioner came to the view that there should be scope for members of the Juvenile Liaison Service to visit the young people under its supervision at a time when their parents are most likely to be available, i.e. in the evenings and at weekends. Juvenile Liaison Officers are now available to families at these times.

(e) Training of Juvenile Liaison Officers

Special training is provided to Juvenile Liaison Officers.

Paragraph 5 - Review of conviction and sentence

126. The right of a person convicted of an offence to a review of his conviction and sentence by a higher court applies in all Irish criminal courts.

Paragraph 6 - Compensation following reversal of conviction

127. The principle that a person whose conviction is quashed or who is pardoned on the grounds that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice is provided for in substance under present procedures. It will be noted that Ireland has made the reservation that the provision of compensation may be by administrative procedures rather than pursuant to specific legal provisions. In fact, it is the practice to pay compensation in such cases on an ex-gratia basis.

Paragraph 7 - Finality of acquittal or conviction

128. It is a fundamental principle of Irish law that a person may not be tried or punished again for an offence in respect of which he has been finally acquitted or convicted.

Article 15

Retrospective criminal sanction - Sentencing

129. Article 15 provides that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. This principle is provided for in Article 15.5 of the Constitution of Ireland which provides as follows:

> "The Oireachtas shall not declare acts to be infringements of the law which were not so at the date of their commission."

Article 15 also prohibits the imposition of a heavier penalty than the one applicable at the time when the offence was committed. It has been the practice in statutes which increase the penalty for criminal offences for the increase to have effect only in relation to offences committed after the date on which the statute comes into operation. The Criminal Justice Act, 1984 which increased penalties in relation to certain offences, provided that the increases would not apply to offences committed before the commencement of the relevant parts of the Act.

130. Article 15 also provides that where, subsequent to the commission of an offence, provision is made by law for the imposition of a lighter penalty, the offender should benefit from this. This principle was taken into account in the framing of the provisions of the Criminal Justice Act, 1990 which abolished the death penalty for all the offences for which the penalty remained a punishment. The Act provides that a person who is tried and convicted for a capital offence committed before the Act comes into operation shall not be sentenced to death but to the sentence of imprisonment which replaces the death penalty. Paragraph 2 of Article 15 is declaratory and its application in the interpretation of this Article is noted.

Article 16

131. All persons are recognized as persons before the law in our jurisdiction.

Article 17

A. Privacy

132. Article 40.3.1 of the Constitution provides that:

> "The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen."

The Courts have decided that the concept of personal rights includes not only those rights specifically mentioned in the Constitution, but encompasses unenumerated rights to be identified as the interpretation and application of the Constitution evolves. The right to marital privacy, for example, was identified as a constitutional right in McGee v. A.G. 1974 I.R. 284. The existence of a right of individual privacy was accepted in Kennedy v. Ireland 1987 I.R. 587. In addition to constitutional protection of privacy, the civil and criminal law can provide a means of safeguarding privacy in individual cases.

B. Family

133. Article 41 of the Constitution provides specific protection for the family. In particular, sub-Article 1 provides that:

(a) The State recognizes the family as the natural primary and fundamental unit group of society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

(b) The State, therefore, guarantees to protect the family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the nation and the State.

C. Home

134. Article 40.5 of the Constitution provides specific protection for the home. It provides that:

> "The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law."

Gardai may obtain a search warrant in accordance with the appropriate provisions of the relevant Statute, e.g. the Misuse of Drugs Act, 1977, and may also in accordance with the law undertake searches without such a warrant, in certain limited cases only. Civil and criminal law also provides protection for the home, for example through the civil wrong of trespass or watching and besetting or through the criminal offence of burglary.

D. Correspondence and communications

135. The Postal and Telecommunications Act, 1983 (sections 84 and 98) sets out, subject to certain exceptions, a general prohibition on the opening, etc. of postal packets and the interception of telecommunications messages. Warrants authorizing the interception of telephone conversations or the opening of letters can be issued by the Minister for Justice and implemented under general directions given by the Minister for Communications under section 110 of the Postal and Telecommunications Act, 1983. Warrants are issued only where they are certified to be required for security purposes or for the prevention or detection of serious crime, information as to which can be got in no other way. In the case of an application by the police for a warrant, the Garda Commissioner must certify that the necessary conditions have been fulfilled. An application from the military authorities must be

certified by the Director of Military Intelligence and backed personally by the Minister for Defence. A warrant remains in force for three months unless renewed on the same conditions as applied to the original warrant. The Interception of Postal Packets and Telecommunications Bill, 1991 will place on a statutory basis the conditions under which the existing power of the Minister for Justice to issue warrants authorizing the interception of communications is to be exercised and will regulate the procedure for the issue of authorizations. It will also introduce new safeguards against any misuse of the power to issue warrants.

E. Honour and reputation

136. Article 40.3.2 of the Constitution provides that:

> "The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name and property rights of every citizen."

A person whose honour or reputation is unfairly damaged may, in particular, seek the protection of the criminal and civil laws on libel.

F. Equivalent article of the European Convention on Human Rights

137. It should be noted that Ireland was in 1988 found by the European Court of Human Rights to be in breach of Article 8 of the above Convention which, in similar terms to Article 17 of the Covenant, states that "everyone has the right to respect for his private and family life, his home and his correspondence". The breach was in respect of statutory offences in relation to certain sexual practices which, in effect, make illegal consensual homosexual acts between males. Legislation is being prepared to give effect to the ruling of the European Court.

Article 18

138. The rights guaranteed by this Article of the Covenant are broadly speaking the same as the rights guaranteed to Irish citizens by Article 44 of the Constitution. The rights referred to in paragraph 4 of Article 18 of the Covenant in relation to the liberty of parents to ensure the religious and moral education of their children are fully protected by Article 42 of the Constitution which provides as follows:

(a) The State acknowledges that the primary and natural educator of the child is the family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.

(b) Parents shall be free to provide this education in their homes or in private schools or in schools recognized or established by the State.

(c) (i) The State shall not oblige parents, in violation of their conscience and lawful preference, to send their children to schools established by the State, or to any particular type of school designated by the State.

(ii) The State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.

(d) The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.

(e) In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

139. Free education at first and second level is available to all children, either in schools provided by the State or in schools which are privately owned but substantially funded by the State. Education is compulsory for all children between the ages of 6 and 15 years. Special measures are in place to assist disadvantaged children and to promote equality of opportunity and gender equality.

140. The State provides for first-level education in national schools which are attended by over 98 per cent of children up to age 12. The vast majority of national schools are State-aided schools, managed at local level, under the patronage of religious authorities. The State gives explicit recognition to the denominational character of these schools. In recent years a small number of State-aided multi-denominational schools have been established in response to local parental demand. The patron for these schools is an association of parents of the local community. These schools receive State aid on the same conditions as the denominational schools.

141. The conditions to be met by national schools in order to qualify for State grants, including the payment of teachers' salaries, are prescribed in the "Rules for National Schools Under the Department of Education". These rules do not discriminate between schools under the management of different religious denominations nor may they be construed so as to affect prejudicially the right of any child to attend a national school without attending religious instruction at that school. State aid for the establishment of a new national school may be granted on application by the representatives of any religious denomination or any group of parents who wish to establish a multi-denominational school provided that the number of pupils of the religious denomination or the number of pupils seeking multi-denominational education in a particular area is sufficient to warrant the establishment and continuance of such a school. The same criteria apply to all schools including schools serving minority religions.

142. Education for children in the 12-19 age range is provided in second-level schools, the majority of which are in receipt of State funding. Teachers of religious instruction are funded by the State if the Minister for Education is satisfied that the majority of pupils attending a school wish to have such

instruction. The pupil enrolled in a State-aided first-level or second-level school can be required to take part in any religious instruction or observances if the parent or guardian of the pupil notifies the school Board of Management of his wishes in that regard.

Article 19

143. The right to hold opinions and the right to freedom of expression are guaranteed by the Constitution in Article 40.6.1 i. At the time of ratification Ireland made the following reservation with regard to Article 19, paragraph 2:

> "Ireland reserves the right to confer a monopoly on or require the licensing of broadcasting enterprises."

144. The Wireless Telegraphy Acts, 1926-1988 provide for the licensing and regulation of wireless telegraph stations other than broadcasting stations. The Minister for Tourism, Transport and Communications exercises the licensing function under these Acts with the objective of the effective management/regulation of the frequency spectrum with minimum interference between services.

145. The Broadcasting Authority Acts, 1960-1979 provide for the Radio Telefis Eireann (RTE), Irish Radio and Television Authority, which is empowered to establish, maintain and operate broadcasting stations and provide national television and sound broadcasting services. The Authority is also empowered to provide local stations (only one such is licensed). All RTE stations are licensed by the Minister under the Broadcasting Authority Acts.

146. The Radio and Television Act, 1988, provides for the establishment of an Independent Radio and Television Commission with power to provide for an additional national sound broadcasting service, local/community broadcasting services and a third television channel. Again the Minister for Tourism, Transport and Communications issues a licence in respect of each station by reference to the coverage area. Under section 5 (2) of the 1988 Act the Minister, having regard to the availability of radio frequencies, may limit the number of areas to be covered by independent stations.

147. The licensing function of the Minister for Tourism, Transport and Communications stems from his responsibility, under a number of international agreements, for the effective management, within predetermined criteria, of the radio and television frequencies. When licences are being issued by the IRTC (Independent Radio and Television Commission) in respect of various stations, it is the Minister's responsibility to ensure that an appropriate frequency is assigned in keeping with our international obligations. If a particular frequency is requested, it may not always be possible to reply favourably if this does not conform to the international standards, but this is the extent of the Minister's intervention in a particular licence application.

148. Under section 31 of the Broadcasting Authority Act, 1960, the Minister for Tourism, Transport and Communications, where he is of the opinion that the broadcasting of a particular matter or matter of a particular class would be

likely to promote, or incite to crime, or would tend to undermine the authority of the State, may direct, by order, RTE to refrain from broadcasting such matter. Any such order must be laid before the Houses of the Oireachtas (Parliament) who may annul it. Under this provision the Minister has renewed an existing order (which, in effect, has been in operation since 1976). That order directs RTE to refrain from broadcasting interviews or reports of interviews with the Irish Republican Army, Sinn Fein, Republican Sinn Fein, the Ulster Defence Association, the Irish National Liberation Army, the Irish People's Liberation Organisation and organizations which in Northern Ireland are proscribed under the relevant Northern Ireland legislation. The order also directs RTE to refrain from broadcasting matter which is either a broadcast by a person representing or purporting to represent Sinn Fein or Republican Sinn Fein or a broadcast on behalf of those organizations.

149. With regard to Orders under section 31 of the Broadcasting Authority Act, 1960 (as amended), it should be noted that in April 1991 the European Commission of Human Rights (Council of Europe) held that an application alleging breaches of the European Convention of Human Rights arising out of such orders, brought by journalists against the Government was inadmissible. Section 12 of the Radio and Television Act provides that while an order under section 31 of the Broadcasting Authority Act, 1960, is in force the provisions of the order will apply equally to the independent broadcasting services. The Minister's statutory licensing functions and the limitations on access by certain organizations to the Irish broadcasting services are considered to be within the spirit of the restrictions allowed by paragraph 3 of Article 19 of the Covenant.

A. The law in relation to censorship in Ireland

150. The law relating to censorship in Ireland covers three main areas i.e. Censorship of Publications, Censorship of Films and Censorship of Video Recordings.

B. Censorship of publications

151. The law in relation to the censorship of publications in Ireland is contained in the Censorship of Publications Acts, 1929 to 1967 as amended by the Health (Family Planning) Act, 1979, and the Censorship of Publications Regulations, 1980.

152. The Acts provide for the appointment of the Censorship of Publications Board and the Censorship of Publications Appeal Board. The Boards are responsible for the censorship of publications in Ireland. It is a matter for the Censorship of Publications Board in accordance with the Censorship of Publication Acts, 1929 to 1967 to decide whether the sale and distribution in the State of any publications should be prohibited. The Board is an independent authority. It is open to any member of the public to make a complaint to the Board whose office is situated at 13, Lower Hatch Street, Dublin 2.

153. The procedure for making a complaint to the Board is set out in the Censorship of Publications Regulations, 1980 which specify that the complaint must: (a) be in writing; (b) state the reason why the complainant considers

that the sale and distribution of the publication should be prohibited; (c) indicate the passages (if any) in the publication upon which the complainant places particular reliance in support of his complaint; and (d) be accompanied by a copy of the book, or in the case of periodical publications, by not less than three recent issues of same.

154. The Censorship of Publications Board may examine a book on foot of a complaint or on their own initiative and are obliged to have regard to the following matters: (a) the literary, artistic, scientific or historic merit or importance and the general tenor of the book; (b) the language in which it is written; (c) the nature and extent of the circulation which, in their opinion, it is likely to have; (d) the class of reader which, in their opinion, may reasonably be expected to read it; and (e) any other matter relating to the book which appears to them to be relevant.

155. The Act provides that if the Board, having duly examined a book, are of the opinion: (a) that it is indecent or obscene, or (b) that it advocates the procurement of abortion or miscarriage or the use of any method, treatment or appliance for the purpose of such procurement and that for any of the said reasons its sale and distribution in the State should be prohibited, they shall by order prohibit its sale and distribution. When a book is the subject of a prohibition order the author, the editor or the publisher or any five members of the Oireachtas acting jointly may appeal the decision to the Censorship of Publications Appeal Board within 12 months after the operative date of the prohibition order or 12 months after the date on which the prohibition order takes effect (whichever is later).

156. In the case of periodical publications the Board must receive a complaint before they can examine the publication. The Board may then prohibit the publication if satisfied that recent issues thereof:

(a) Have usually or frequently been indecent or obscene, or

(b) Have advocated the procurement of abortion or miscarraige or the use of any method, treatment or appliance for the purpose of such procurement, or

(c) Have devoted an unduly large proportion of space to the publication of matter relating to crime.

157. Where a periodical publication is the subject of a prohibition order the Censorship of Publications Appeal Board may at any time on the application of the publisher or the joint application of five members of the Oireachtas revoke or vary the order so as to exclude from the application of the order any particular edition or issue of the periodical publication. The Acts also provide for the keeping of a Register of Prohibited Publications and any member of the public may inspect the Register free of charge. The Register is in two parts, one relating to books and the other relating to periodic publications.

C. Censorship of Films

158. Film Censorship is covered by the Censorship of Films Acts, 1923 to 1970. The Acts provide for the appointment of an Official Censor and Censorship of Films Appeal Board who are responsible under the Acts for the censorship of films to be shown in public. The Acts provide that "no picture should be exhibited in public by means of a cinematograph or similar apparatus unless and until the Official Censor has certified that the whole of such picture is fit for exhibition in public". The Official Censor shall certify that a film is fit for exhibition in public "unless he is of opinion that such picture or some part thereof is unfit for general exhibition in public by reason of its being indecent, obscene or blasphemous or because the exhibition thereof in public would tend to inculcate principles contrary to public morality or would be otherwise subversive of public morality". Furthermore, the Official Censor may permit the exhibition in public of films subject to certain conditions which "in the opinion of the Official Censor are necessary to prevent the exhibition of the picture in public being subversive of public morality". Any person aggrieved by a decision of the Official Censor refusing to issue a certificate in respect of a film or a decision to attach certain conditions or restrictions to the exhibition of a film may appeal to the Censorship of Films Appeal Board.

D. Censorship of Video Recordings

159. The Video Recordings Act, 1989 makes provision for the control and regulation of the supply and importation of video recordings. Under section 3 (1) of the Act, the Official Censor shall, on application to him in relation to a video work, grant to the person making the application a certificate declaring the work to be fit for viewing unless he is of opinion that the work is unfit for viewing because:

(a) the viewing of it:

(i) would be likely to cause persons to commit crimes, whether by inciting or encouraging them to do so or by indicating or suggesting ways of doing so or of avoiding detection, or

(ii) would be likely to stir up hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation, or

(iii) would tend, by reason of the inclusion in it of obscene or indecent matter, to deprave or corrupt persons who might view it,

or

(b) it depicts acts of gross violence or cruelty (including mutilation and torture) towards humans or animals,

in which case he shall make an order prohibiting the supply of video recordings containing the work.

160. When granting a certificate the Official Censor shall grant a particular classification to the video by determining whether a video work is fit for viewing by: (a) persons generally, or (b) persons generally but, in the case of a child under the age of 12 years, only in the company of a responsible adult, or (c) by persons aged 15 years or more, or (d) by persons aged 18 years or more.

161. Section 10 of the Video Recordings Act, 1989 provides, inter alia, that a person aggrieved by a prohibition order or by a classification assigned to a video work may appeal (within three months of the publication of the prohibition order or in the case of a classification the grant of the supply certificate) the decision of the Official Censor to the Censorship of Films Appeal Board. The Appeal Board, may, in relation to a prohibition order affirm the decision of the Official Censor or revoke the order and in relation to a classification affirm it or direct that the video work concerned be given a specified higher classification. Section 42 of the Customs Consolidation Act, 1876 empowers the Irish customs authorities to curtail the distribution of pornographic material by prohibiting the importation of obscene or indecent prints, paintings, photographs, books, cards or any other obscene or indecent article.

162. The number of obscene or pornographic video tapes and magazines seized in the last five years for which statistics are available are as follows:

Year	No. of Video Tapes	No. of Magazines	Total
	(1)	(1)	(1)
1986	960	8 500	9 460
	(1)	(1)	(1)
1987	750	6 500	7 250
1988	244	5 837	6 081

(1) Estimate. The estimated number of seizures in 1989 was 700. The corresponding figure for 1990 was 350. Information on the number of individual items seized in 1989 and 1990 is not available.

163. Video tapes and magazines are regarded as pornographic or indecent if they contain material which is suggestive of or inciting to sexual immorality or unnatural vice, or likely in any other similar way to corrupt or deprave. The available details of methods of importation of items seized in 1988 are as follows:

		Video Tapes	Magazines
(a)	carried by individuals	16	496
(b)	imported in container loads	17	100
(c)	imported by other methods of transport, i.e. Parcel Post	166	1 182
(d)	Balance from search of premises	45	4 059

There have been no prosecutions as a result of seizures of obscene or pornographic video tapes and magazines for the years 1986 to 1988 inclusive.

Article 20

164. At the time of ratification Ireland made the following reservation with regard to Article 20, paragraph 1 of the Covenant: Ireland accepts the principle in paragraph 1 of Article 20 and implements it as far as it is practicable. Having regard to the difficulties in formulating a specific offence capable of adjudication at national level in such a form as to reflect the general principles of law recognized by the community of nations as well as the right to freedom of expression, Ireland reserves the right to postpone consideration of the possibility of introducing some legislative addition to, or variation of, existing law until such time as it may consider that such is necessary for the attainment of the objective of paragraph 1 of Article 20.

165. The Prohibition of Incitement to Hatred Act, 1989, which was enacted in November 1989, removed a legislative obstacle to ratification of the Covenant by Ireland by enshrining in Irish law the purpose of Article 20 (2) of the Covenant. Prior to the enactment of the incitement legislation, Irish law did not go so far as to prohibit specifically incitement to hatred - the then legal provisions being confined to incitement to do acts which in themselves are criminal. That legislation covered many specific acts of incitement to violence, but not incitement to hatred. Incitement to hatred is not regarded as being a particular problem in Ireland and the primary purpose of the legislation was to clear the way to ratification of the Covenant.

166. The Act defines "hatred" as meaning hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation. The groups of persons protected by the Act are those whose inclusion is necessitated by the Covenant on Civil and Political Rights, those who are separately covered by Article 4 of the Convention on the Elimination of All Forms of (Racial) Discrimination and those who particularly asked to be included because of a perceived vulnerability to hatred being stirred up against them.

167. Ireland is essentially a homogeneous society with very few citizens or residents belonging to racial or ethnic minorities. The reasons for this are complex with historic, geographic and economic roots. No significant change in this pattern is foreseen. Indeed, Ireland's problem down the years has been the emigration of its own people rather than having to cope with immigration from other countries.

168. Act creates a new offence of publishing or distributing material, or using words or behaviour, or displaying written material, in any place other than inside a private residence, or distributing, showing or playing a recording of visual images or sounds, where these are threatening, abusive or insulting and are intended, or likely, to stir up hatred. The "private residence" exclusion is heavily qualified so that an offence could be committed under the legislation where, for example, the inflammatory words were spoken inside a private residence, but were heard outside that residence. An offence could also be committed where such words were spoken at a public meeting taking place inside a private residence.

169. The Act also creates offences where the hatred stirred up is broadcast, whether by radio, by television or by any other means. It is an offence under the Act to prepare or to be in possession of material or recordings of a racist or similarly offensive nature, with a view to its being distributed or broadcast or otherwise published in Ireland or elsewhere. This provision was enacted to deal with a problem that had arisen in Ireland on a few occasions in the past, that is, the preparation of racist material in Ireland for distribution abroad. A person convicted on indictment for an offence created by the legislation can be fined up to £10,000 or can be imprisoned for a term not exceeding two years or can be both fined and imprisoned. The police have been given power under the legislation to enter and search a premises under warrant where they have reasonable grounds for suspecting that offending material or recordings are being kept there. The police also have power to seize any such material or recording. In addition the Act gives a court power to order the forfeiture and destruction or disposal of offending material following a conviction.

Article 21

170. The right of peaceful assembly may be restricted in conformity with the law where necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Irish law and in particular the provisions of Article 40.6.10 ii. of the Constitution guarantee these rights. There are certain restrictions on the right of assembly contained in the Offences Against the State Act, but these are in accord with the restrictions which are permitted under this Article of the Covenant.

Article 22

171. The law relating to trade unions in Ireland falls into two distinct categories. The pre-independence British statutes were passed mainly to secure trade union freedom and remove trade unions and their activities from the operation of the law. The post-independence statutes of the Oireachtas (Parliament), on the other hand sought to introduce a measure of public regulation of trade unions. The Constitution of Ireland, which came into force in 1937, has had a very significant impact on industrial relations law and practice and has given the judiciary a new role in the industrial relations process.

A. Constitutional Provisions on Freedom of Association

172. The relevant provision in the Constitution in relation to freedom of association is Article 40.6.1. In this Article the State guarantees liberty for the exercise, subject to public order and morality, of, inter alia, "the right of citizens to form associations and unions". The Article provides that laws may be enacted for the regulation and control in the public interest of the exercise of this right. Article 40.6.2 provides that laws regulating the manner in which the right of forming associations and unions may be exercised shall contain no political, religious or class discrimination.

173. Some categories of workers are forbidden by law to join ordinary trade unions and to resort to industrial action to effect changes in their terms and conditions of employment. Members of the Defence Forces (Defence Act, 1954) and of the Garda Siochana - Police (Garda Siochana Act, 1924) are so affected.

174. The constitutional guarantee of the freedom of association has been considered in a number of important legal cases. In 1947 in the case of National Union of Railwaymen v. Sullivan (1947) IR77 the Supreme Court held that the provision in Part III of the Trade Union Act, 1941, which sought to confer on specified unions the right to organize and represent workers in a particular employment to the exclusion of other unions, was ultra vires the Constitution since it infringed Article 40.6.1. In the opinion of the Supreme Court, any attempt by the Oireachtas to prescribe which unions' workers were entitled to join was not an attempt to regulate or control the right to form unions but an attempt altogether to abolish the exercise of that right. The case of the Educational Co. of Ireland Ltd. v. Fitzpatrick (1961) IR345 established the principle that a freedom or right to associate necessarily implied a correlative right not to join any trade union or a particular trade union. The judgement of the Supreme Court in the case in effect made the post-entry closed shop illegal in Ireland. Although the power of the Oireachtas to regulate freedom of association is now severely limited, trade unions may themselves impose restrictions on the right to join. A trade union is not obliged, constitutionally or otherwise, to accept every applicant into membership. A number of legal cases have established that there is no constitutional right to join the union of one's choice.

B. International Obligations Concerning Freedom of Association

175. The freedom of association is also guaranteed in a number of other international instruments which Ireland has ratified and which it is, therefore, bound to uphold under international law. These include the Universal Declaration of Human Rights, 1948; the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950; ILO Conventions No. 87 - Freedom of Association and Collective Bargaining and No. 98 - Right to Organize and Collective Bargaining; and the European Social Charter.

C. Statute Law Affecting Freedom of Association

176. The principal statutes governing the activities of trade unions in Ireland are: The Trade Union Act, 1871; The Conspiracy and Protection of Property Act, 1875; The Trade Union Acts, 1941 and 1971 and the Industrial Relations Act, 1990. Trade unions in Ireland derive their legal status largely from the Trade Union Act, 1871, as amended. Section 2 of the Act, which applied to the United Kingdom as well as to Ireland, inter alia, provided a measure of protection for bona fide union activities. It laid down that:

> "The purpose of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise".

The Act thereby removed the taint of illegality from trade unions. The 1871 Act instituted a system of voluntary registration for trade unions. Unions may register with the Registrar of Friendly Societies but, in order to do so, they must have written rules setting out their objectives, benefits and so on. They must have certain statutory objects but they may have other objects as well. In return, registration confers certain powers and advantages on unions, which are not enjoyed by unregistered unions.

177. The Conspiracy and Protection of Property Act, 1875, removed the application of the doctrine of criminal conspiracy from acts done by unions "in contemplation or furtherance of a trade dispute" unless such acts, when done by one person, would be criminal. It set definite limits to the application of the law of conspiracy to trade disputes. It also expressly legalized picketing and questions of intimidation and violence were left to be dealt with by the ordinary criminal law. Collective bargaining was thus recognized by the law.

178. The Trade Disputes Act, 1906 which was the main statute dealing with trade disputes, removed the application of the doctrine of civil conspiracy to acts done "in contemplation or furtherance of a trade dispute" and removed tortious liability for inducing others to break their contracts of employment. It also re-established the general immunity of the funds of a trade union from liability for the tortious acts of its members, servants or agents. The 1906 Act made it impossible to sue a trade union for calling or supporting a strike or any other kind of industrial action. The Trade Disputes Act, 1906 was repealed by the Industrial Relations Act, 1990 and its main provisions were re-enacted with some amendments.

179. Post-independence statutes of the Oireachtas, in contrast to earlier legislation, sought to introduce some regulation of 'rade unions by the State, principally in the form of a system of licensing of unions. The purpose of this provision was to prevent trade union proliferation and, in particular, to make it more difficult for new trade unions to be set up or breakaway unions to be formed. Through the negotiation licence requirement the State sought to introduce some degree of regulation into a situation, where there was a large number of unions, many of them small, a considerable degree of inter-union rivalry often resulting in inter-union disputes and a tendency for disaffected groups of members to form breakaway unions. These measures, which were fully supported by the wider trade union movement, were designed to ensure strong and stable trade union structures and promote orderly industrial relations.

180. The Trade Union Act, 1941 made it obligatory for any body of persons, which wished to carry on negotiations for the fixing of wages or other conditions of employment to hold a negotiation licence granted by the Minister for Labour. The conditions, which a body had to fulfil in order to be granted a licence, were amended by the Trade Union Act, 1971 and the Industrial Relations Act, 1990.

181. The principal conditions which a union must satisfy in order to obtain a negotiation licence are as follows:

(a) It must be registered as a trade union under the Trade Union Acts with the Registrar of Friendly Societies or, in the case of a foreign-based union, it must be a trade union under the law of the country in which its headquarters control is situated;

(b) It must have a minimum of 1,000 members;

(c) It must give notice of its intention to apply for a licence 18 months before doing so;

(d) It must deposit with the High Court a sum of money ranging from IR£20,000 to IR£60,000, depending on its membership.

Once a trade union satisfies all these conditions, the Minister must grant a negotiation licence. The Trade Union Act, 1971 allows a union, which does not fulfil either the minimum membership condition or the 18 months' waiting period to apply to the High Court to have either or both of these conditions waived.

182. A number of British-based unions operate in Ireland. Foreign-based unions need not register with the Register of Friendly Societies in order to obtain a negotiation licence. However, a foreign-based union must have a controlling authority, every member of which is resident in the State or in Northern Ireland, which has power to make decisions in relation to issues of direct concern to members of the trade union resident in the State or Northern Ireland. Apart from this, a foreign-based union must satisfy the same conditions to obtain a negotiation licence as Irish-based unions.

183. The Trade Union Act, 1941 exempts certain types of bodies, known as "excepted bodies" from the requirement to hold a negotiation licence. These include civil service associations; organizations of teachers; and staff associations, whose members are all employed by the same employer. In addition to the organizations which are automatically "excepted bodies", the Minister for Labour has power to designate a particular body as being an "excepted body". This power has been used mainly in relation to professional-type bodies which are not solely concerned with negotiations on wages and conditions of employment. "Excepted bodies" do not enjoy the immunities under the Industrial Relations Act, 1990 in relation to industrial action, which are confined to trade unions holding negotiation licences. At present 58 trade unions hold negotiation licences and there are 18 bodies which have been designated "excepted bodies" by Ministerial Order.

Article 23

184. Paragraph 1 of Article 23 is in similar terms to Article 41.1 of the Constitution of Ireland which states as follows:

"Article 41

1. The State recognizes the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

> 2. The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State."

185. Paragraph 2 of the Covenant provides that the right of men and women of marriageable age to marry and to found a family shall be recognized. This right has been judicially recognized as one of the unspecified personal rights of the citizen referred to in Article 40.3 of the Constitution. (see judgement of Kenny J. in Ryan v. Attorney-General (1965) I.R. 294).

186. Paragraph 3 of the Covenant provides that no marriage shall be entered into without the full and free consent of the intending spouses. The voluntary consent of the parties to a marriage is essential for a marriage to be valid under Irish law. The grounds for proving the absence of real consent to a marriage include insanity, intoxication, mistake, misrepresentation, fear, duress, intimidation or undue influence. These grounds, apart from insanity, which is provided for in the Marriage of Lunatics Act, 1811, are to be found in the common law.

187. At the time of ratification, Ireland made the following reservation with regard to Article 23, paragraph 4 of the Covenant:

> "Ireland accepts the obligations of paragraph 4 of Article 23 on the understanding that the provision does not imply any right to obtain a dissolution of marriage."

The rights and responsibilities of spouses during marriage are similar to those outlined in Article 23 and derive from the Irish Constitution (see Article 41.1 above), statutory provisions and judicial decisions. The main statutory provisions are the following: a husband and wife have independent legal capacities (Married Women's Status Act, 1957) and are joint guardians of their children (Guardianship of Infants Act, 1964); succession (inheritance) laws apply equally to a husband as to a wife (Succession Act, 1965); the family home may be prevented from being sold by one spouse over the head of the other spouse (Family Home Protection Act, 1976) and in bankruptcy no disposition of the family home can take place without the prior sanction of the court (Bankruptcy Act, 1988); a court order may be obtained barring a spouse from the family home where the safety and welfare of the other spouse or any child so requires (Family Law (Protection of Spouses and Children) Act, 1981); maintenance may be ordered to be paid by either spouse in support of the other spouse or any dependent children (Family Law Maintenance of Spouses and Children) Act, 1976); in proceedings for judicial separation, the court has a wide range of powers available to order financial provision and security for a spouse and dependent children (Judicial Separation and Family Law Reform Act, 1989) - these include maintenance, secured maintenance, lump sum and property transfer orders and orders relating to occupation of the family home; in exercising its powers, the court must take into account the circumstances of both spouses, including the wife's contribution to family finances and to caring for the family; a wife has a domicile independent of her husband (Domicile and Recognition of Foreign Divorces Act, 1986).

188. Article 41.3.2 of the Irish Constitution states that no law shall be enacted providing for the grant of a dissolution of marriage. A proposal to

remove the Constitutional ban on divorce was defeated in a referendum of the people held in 1986. The question of legislation to enable an Irish court to order financial provision for a person whose foreign divorce is recognized in Ireland is being examined. The court already has power to order maintenance for a child whose parents are no longer married to each other (Status of Children Act, 1987).

Article 24

189. The right of a child to protection on the part of his family, society and the State is set out in both the Irish Constitution and existing legislation. Article 40 of the Constitution states:

> "40.1. All citizens, shall, as human persons, be held equal before the law.
>
> This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.
>
> 40.3.1. The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.
>
> 40.3.2. The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen."

Article 42.5 of the Constitution states:

> "In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of natural parents, but always with due regard for the natural and imprescriptible rights of the child."

190. The recently enacted Child Care Act, 1991, represents the most important and comprehensive reform of the law in relation to children. Other relevant laws are the Children Act, 1908, the Childrens Acts, 1934 and 1941, the Children (Amendment) Acts, 1949 and 1957, the Health Act, 1953, the Status of Children Act, 1987 and the Children Act, 1989. The main provisions of the Child Care Act, 1991, are as follows:

(a) the placing of a statutory duty on health boards to promote the welfare of children who are not receiving adequate care and protection;

(b) to strengthen the powers of health boards to provide child care and family support services;

(c) the improvement of the procedures to facilitate immediate intervention by health boards and the Gardai (police authorities) where children are in serious danger;

(d) the revision of provisions to enable the courts to place children who have been assaulted, ill-treated, neglected or sexually abused or who are at risk, in the care of or under the supervision of regional health boards;

(e) the introduction of arrangements for the supervision and inspection of pre-school services; and

(f) the revision of provisions in relation to the registration and inspection of residential centres for children.

191. The eight regional health boards have a statutory obligation to provide welfare services for children whose parents or guardians encounter difficulties in supporting them. Where a child is in any danger from either physical or mental abuse or in a situation which could otherwise seriously affect his potential development, the health boards may initiate procedures to remove the child from the care of the parents/guardians and make alternative arrangements for his care. On the basis of a court order the child may be placed with foster parents, in residential care or, where applicable, with adoptive parents. Where a child has been placed in foster or residential care, the health board is responsible for the subsequent supervision of the child. The revised legislation empowers a court to make a child party to all or part of care proceedings and to appoint a solicitor to represent the child where the court is satisfied that this is necessary in the interests of the child. It is stated in the legislation that the court shall regard the welfare of the child as the first and paramount consideration and that it will, in so far as it is practicable, give due consideration, having regard to the child's age and understanding, to the wishes of the child.

192. The Status of Children Act, 1987, removed the legal consequences of illegitimacy which formerly disadvantaged children born outside marriage. Irish law requires qualified informants to register the birth of a child, under penalty, within a statutory period. Furthermore there is provision for late registration, under certain circumstances, outside this statutory period. A child born in Ireland (either in the Republic or of an Irish citizen in Northern Ireland) or on an Irish ship or aircraft automatically acquires Irish citizenship (the jus soli rule). A person of non-Irish parentage who is born in Northern Ireland since 1922 acquires Irish citizenship merely by making or by having made for them the prescribed declaration. Another mode is by the jus sanquinis method. Anyone who at birth has a mother or father possessing Irish citizenship is an Irish citizen, again subject to certain qualifications. Adoption by an Irish citizen in accordance with the procedures laid down in the Adoption Acts, 1952-1976, also confers Irish nationality. A foreign adoption, effected in favour of an Irish citizen, which is recognized in accordance with the provisions of the Adoption Act, 1991, also confers Irish nationality on the adopted child. Another way is by naturalisation but this applies only to adult aliens.

Article 25

A. General

193. The right to vote and stand as a candidate in elections to the office of President, to the Dail (Lower House of Parliament) and the Seanad (Upper House) is governed by provisions of the Constitution and electoral law. The Constitution provides that no law shall be enacted disqualifying any person from membership of the Dail or any citizen from voting at a Dail election on the ground of gender. The right to stand and vote at elections for the European Parliament and local authorities is governed by provisions of electoral law. Provision for the referral of a Bill to amend the Constitution and for the referral of other proposals to be submitted by referendum to the decision of the people is contained in the Constitution and in referendum law.

194. Only citizens of Ireland are entitled to stand for election to the office of President, to the Dail and Seanad and to the European Parliament. There is no requirement in relation to citizenship regarding membership of a local authority. Only Irish citizens are entitled to vote at Presidential elections, Seanad elections and referenda. Both citizens of Ireland and of the United Kingdom normally resident in this country are entitled to vote at Dail elections. Citizens of Ireland, and nationals of other member States of the European Community resident here, may vote at European Parliament elections. Any person, irrespective of nationality, normally resident in this country is entitled to vote at local elections. The entitlements in relation to voting rights referred to above are dependent on persons complying with other requirements in relation to age and residence in a constituency or local electoral area on the qualifying date for a register of electors.

195. With regard to paragraph 25 (a) of the Covenant: there are no restrictions on local authority staff engaging in party political activity to the extent that they may join a political party and may stand for local authority, Dail or Seanad Eireann elections. However, a person is prohibited under section 21 (1) of the Local Government Act, 1955, from holding any office of profit under or being employed by a local authority while he is a member of that authority. Section 25 of the Local Elections (Petition and Disqualifications) Act, 1974, empowers the Minister to designate by order offices or employments to which section 21 (1) of the 1955 Act shall not apply. Ministerial Orders which were made in 1974 and 1976 excluded certain classes, descriptions and grades of offices and employments from the prohibition contained in section 21 (1) of the 1955 Act. Section 21 (2) of the 1955 Act provides for a further prohibition on holders of major offices (mainly senior administrative and professional posts) where the person concerned is a member of any local authority whose functional area is within or is adjoining the area of the employing authority.

B. Right to stand for election

1. Office of President

196. Article 12.4 of the Constitution provides that every citizen who has reached their 35th year is eligible for the Office of President. Every candidate for election to the Office of President, other than a former or

retiring president, must be nominated either by at least 20 members of the Oireachtas or by the Councils of at least four county or county borough councils. No person may hold the Office of President for more than two terms.

2. Dail and Seanad

197. Article 16.1.1 of the Constitution provides that every citizen without distinction of gender who has reached the age of 21 years and who is not placed under disability or incapacity by the Constitution or by law shall be eligible for membership of the Dail. Article 18.2 provides that a person to be eligible for membership of the Seanad must be eligible to become a member of the Dail. The incapacities for membership of the Dail contained in the Constitution are persons who hold the office of Controller and Auditor General and the holder of office of President of Ireland, or a person who is a Judge.

198. Section 51 of the Electoral Act, 1923, provides that the following persons are disqualified from being elected or sitting as a member of the Dail: a person undergoing a sentence of imprisonment with hard labour for any period exceeding six months or of penal servitude for any term; an imbecile or any person of unsound mind; an undischarged bankrupt; a member of the Defence Force on full pay; a member of any police force in the State on full pay; and a civil servant who is not expressly permitted, by terms of employment, to be a member.

199. Civil servants are subject to certain restrictions as regards involvement in political activity. No civil servant may become a member of either the Dail or Seanad while remaining in the Civil Service. If they wish to contest an election to either House of the Oireachtas they must resign from the service. Underlying the present state of affairs is the belief that while it is desirable that as many citizens as possible play an active part in the affairs of the State, public interest demands that confidence be maintained in the political impartiality of civil servants. The disqualification relating to a prison sentence does not take effect in relation to sitting members until after the expiration of a period of 30 days of the sentence or, in the event of an appeal, from the date of the order confirming the sentence.

3. The European Parliament

200. Section 7 of the European Assembly Elections Act, 1977, (amended by section 2 of the European Assembly Elections Act, 1984) provides that a person who is not eligible for membership of the Dail, or who is the holder of the office of Attorney-General, Chairman or Deputy Chairman of the Dail or Seanad or of Minister of State is not eligible to be elected as a representative in the European Parliament. In addition to the disqualifications contained in the Electoral Act, 1923, the enactments governing most recently established State Bodies provide that a member of the Dail or of the European Parliament cannot be a member of the board of such a body, or be an employee of such a body. Nomination as a candidate for election to the Dail or the European Parliament results in the employee or the member of the board ceasing to be such a member or to hold such employment.

4. Local Authority

201. A person is eligible for membership of a local authority on reaching the age of 18 years. There is no residence or citizenship requirement for membership of a local authority. The following are disqualified from local authority membership:

(a) A person under 18 years of age (Article 12 of the Schedule to the Local Government (Application of Enactments) Order, 1898);

(b) A person who has, within the five years before election, or since election, been sentenced to imprisonment with hard labour without the option of a fine or any greater punishment (Article 12 of the Schedule to the Local Government (Application of Enactments) order, 1898);

(c) Absence, without approved excuse, from meetings for over six months consecutively (twelve months in case of a county or county borough) (Article 12 of the Schedule to the Local Government (Application of Enactments) Order, 1898);

(d) Conviction of making a false statement for the purpose of obtaining expenses for attending a meeting of vocational education committee (section 6(6)(b) of the Vocational Education (Amendment) Act, 1947);

(e) Non-payment of a charge or surcharge within the prescribed period (section 62 of Local Government Act, 1925);

(f) Non-payment of rates within a financial year (section 57 of the Local Government Act, 1941);

(g) Conviction of acting as a member of a local authority when disqualified or voting when prohibited (section 94(3) of the Local Government (Ireland) Act, 1898);

(h) Certain administrative staff of local authorities, primarily above the rank of clerical officer, may not be employed by the local authority while a member of that authority (section 21(1) of the Local Government Act, 1955, section 25(1) of Local Elections (Petitions and Disqualifications) Act, 1974);

(i) Membership of the Permanent Defence Force or Reserve Defence Force actively employed (section 104 of the Defence Act, 1954);

(j) A person may not hold any major office under a local authority while a member of any other local authority whose functional area is in or adjoining that of the employing local authority (section 21(2) of the Local Government Act, 1955).

C. Right to vote

1. Presidential election

202. Article 12.2 of the Constitution provides that the President of Ireland shall be elected by direct vote of the people and that every citizen who has the right to vote at a Dail election has the right to vote at a presidential election (see paragraph 203). Section 5 of the Electoral Act, 1985, provides that a person shall be entitled to be registered as a presidential elector on reaching the age of 18 years, is ordinarily resident in a constituency and is an Irish citizen. Section 51 of the Electoral Act, 1963 (amended by section 3 of the Electoral Act, 1985) provides that every person whose name is entered in the register of presidential electors may vote at presidential elections.

2. Dail election

203. Article 16.1.2 of the Constitution provides that every citizen without distinction of gender, who has reached 18 years of age, and who is not disqualified by law and complies with the provisions of the law relating to the election of members of the Dail shall have the right to vote at an election of members of the Dail. Section 5(1) and (1A) of the Electoral Act, 1963 (amended by section 2 of the Electoral Act, 1985) provides that a person shall be entitled to be registered as a Dail elector on reaching 18 years, is ordinarily resident in a constituency and if an Irish citizen or a British citizen. Section 26 of that Act provides that every person whose name is entered in the register of Dail electors is entitled to vote at a Dail election.

3. Seanad election

204. Article 18 of the Constitution provides that the Seanad shall be composed of sixty members of whom eleven shall be nominated by the Taoiseach and 49 elected. Provision is made in this Article for the election of 6 of the 49 members by universities or institutions of higher education. Article 18 also provides that election of the elected members of the Seanad shall be regulated by law. Section 6(1) of the Seanad Electoral (University Members) Act, 1937, provides that the National University of Ireland, and the University of Dublin are both constituencies at every Seanad election, for the election of three members each. This section also provides that every person who is for the time being registered as an elector in the register of electors for either university constituencies shall be entitled to vote in that constituency. Section 7 of the 1937 Act (as amended by section 2 of the Electoral Amendment Act, 1973) provides that every person who is a citizen of Ireland and who has received a degree from the National University of Ireland or the University of Dublin and has reached the age of 18 years shall be registered as a Seanad elector in the relevant constituency.

205. Section 44 of the Seanad Electoral (Panel Members) Act, 1947 provides that at every general election to the Seanad the electorate for Panel members candidates shall be the members of the newly elected Dail, the outgoing members of the Seanad and the members of every council of a county or county

borough. Section 45(2) of that Act provides that a person who is a member of more than one such council shall be entitled to vote once only at an election.

4. European Parliament election

206. Section 3 of the European Assembly Elections Act, 1977, provides that every person who has reached the age of 18 years, is ordinarily resident in a constituency and is either an Irish citizen or a national of another Member State of the EC is entitled to be registered as a European parliament elector. Section 4 provides that every person whose name is entered in the register of European Parliament electors may vote at a European Parliament election.

5. Local authority election

207. Section 5(2) of the Electoral Act, 1963 (amended by section 1 of the Local Elections Act, 1972 and section 2 of the Electoral (Amendment) Act, 1973) provides that a person shall be entitled to be registered as a local government elector on reaching the age of 18 years and is ordinarily resident in a local electoral area. Section 85 of that Act provides that every person whose name is entered in the register of local government electors only may vote at elections to local authorities. There is no requirement in relation to citizenship for voting at local elections.

6. Referenda

208. Article 27 of the Constitution contains provision for the referral of a Bill to the people by referendum, following a joint petition to the President on the grounds that the Bill contains a proposal of such national importance that the will of the people on it ought to be ascertained, if the president decides that this should be done. Article 46.2 of the Constitution provides that every Bill containing a proposal for the amendment of the Constitution must be referred by referendum to the people for a decision, in accordance with the law relating to a referendum. In the case of a constitutional amendment, the proposal is approved if a majority of those voting approve (Article 47.1 of the Constitution). In the case of any other proposal, a proposal is vetoed if the majority of votes cast at the referendum are against the proposal and if the votes so cast amount to at least one third of the voters on the register (Article 47.2). The law relating to the holding of a referendum is contained in the Referendum Act, 1942, and in Part 5 of the Electoral Act, 1963. Section 70 of the Electoral Act, 1963, provides that every person whose name is on the register of presidential electors, (i.e. Irish citizens only) is entitled to vote at a referendum.

D. General provisions in relation to registration of electors

209. The register of electors comes into force on 15 April each year. Every person, otherwise qualified, who has reached 18 years on 15 April and was ordinarily resident in a constituency on the qualifying date is entitled to be registered for that constituency. The qualifying date, on which a person must have been resident at an address to be eligible for registration at that address is the 15 September preceding the coming into force of the register. However, persons absent from an address for up to 18 months are deemed to be ordinarily resident at that address. There is no provision for the

registration as electors of persons who are resident outside the State. However, a civil servant posted abroad, and resident spouse if any, are deemed to be ordinarily resident in the State and entitled to be registered as electors.

E. Frequency of elections and referenda

1. Presidential elections

210. Articles 12.3.1 of the Constitution provides that the president shall hold office for seven years from the date upon which he enters office (unless through death, resignation or removal from office etc.).

2. Dail and Seanad

211. Article 16.5 of the Constitution provides that the same Dail shall not continue for a longer period than seven years from the date of its first meeting, but a shorter period may be fixed by law. Section 10 of the Electoral Act, 1963, provides that the same Dail may not continue for longer than five years. Article 18.8 of the Constitution provides that a general election for the Seanad shall take place within 90 days after the dissolution of the Dail.

3. European Parliament

212. Article 3 of the Act attached to the Council of the European Communities Decision of 20 September 1976 (76/787/ECSC, Euratom) provides that representatives to the European Parliament shall be elected for a period of five years.

4. Local authorities

213. Section 81 of the Electoral Act, 1963, provides that elections to local authorities shall be held quinquennially. Section 2 of the Local Elections Act, 1973, provides that the Minister for the Environment may make an order postponing the year for the holding of such elections. Such an order does not come into force unless and until it has been confirmed by resolution of both Houses of the Oireachtas (Parliament).

F. Secrecy of ballot

214. The Constitution guarantees the secrecy of the ballot in the case of Presidential elections (Article 12.2.3), Dail elections (Article 16.1.4) and Seanad elections (Article 18.5). Section 2(3) of the European Assembly Elections Act, 1977, provides that voting at European parliament elections shall be by secret ballot. Article 43(3) of the Local Elections Regulations, 1963, provides for the casting of votes at local elections in secret. Section 22 of the Referendum Act, 1942, provides for the protection of the secrecy of the ballot at a referendum.

G. Civil Service Commission

215. The Civil Service Commission was established in 1923 under the Civil Service Regulations Act, 1923. The Commission now operates under the Civil Service Commissioners Act, 1956, which replaced the earlier legislation, and is concerned mainly with the selection, following public advertisement, of personnel for appointment to permanent positions in the Civil Service. In recent times, the Commission has also become involved in the holding of internal promotion competitions for serving civil servants.

H. Local Appointments Commission

216. The Local Appointments Commission was established under the Local Authorities (Officers and Employees) Act, 1926. This Act provided for the appointment of the Commissioners and thereby placed the selection of persons to be appointed to professional, technical and administrative posts under local authorities in the hands of an independent Commission. The original Act was amended and supplemented by subsequent legislation and the Commission now concerns itself mainly with the selection of personnel for recommendation to professional and senior administrative posts under various local bodies.

I. Operation of the Commissions

217. Each Commission is headed by three Commissioners who are appointed by the Government. Both sets of Commissioners serve in a part-time ex officio capacity, chaired in each case by the Ceann Comhairle (Speaker) of the Dail, and are independent in the discharge of their statutory functions. The main function of the Commissioners is to ensure fair and open competition and selection on merit for the range of public appointments for which they are responsible. All open competitions held by the Commissioners are advertised nationally and all those who fulfil the requirements specified are eligible to compete. The Commissioners are committed to a policy of equal opportunity.

Article 26

218. The Constitution of Ireland provides in Article 40.1 for the equality of all citizens before the law. This provision has already been analysed in the Government's comments in relation to Article 2 of the Covenant. The remarks made there concerning Article 40.1 in the context of non-discrimination in relation to the rights secured by the Covenant apply with equal force to non-discrimination as a general principle. In addition, the Constitution of Ireland expressly prohibits discrimination on grounds of religious profession, belief or status (Article 44.2.3°) and political or other opinion (Article 40.6.1°.i.).

219. As regards the right to equality in employment between men and women, this is provided for in the Anti-Discrimination (Pay) Act, 1974, and the Employment Equality Act, 1977.

Anti-Discrimination (Pay) Act, 1974

220. Section 2 of the 1974 Act established the right to equal remuneration where women employed by the same or an associated employer in the same place of employment are doing "like work" with men.

221. Section 7 of the Act provides that a dispute between an employer and an employee regarding equal pay may be referred to an Equality Officer of the Labour Relations Commission who will investigate the dispute and make a recommendation. (The Labour Relations Commission, established under the Industrial Relations Act, 1990, is a tripartite body with employer, trade union and independent representation. It has general responsibility for promoting good industrial relations. The Commission provides a comprehensive range of services designed to help prevent and resolve disputes. The Equality Service is part of the Labour Relations Commission but is independent in the performance of its functions).

222. Section 8 of the Act provides that a party to a dispute may appeal to the Labour Court against an Equality Officer's recommendation or may request a determination that the recommendation has not been implemented. (The Labour Court, established under the Industrial Relations Act, 1946, provides machinery for resolving employment disputes and functions independently of the Minister for Labour). An appeal against a determination of the Labour Court may be made to the High Court on a point of law. An employee may complain to the Labour Court that the determination has not been implemented by the employer. The Labour Court may by order direct the employer to implement the determination. An employer who fails to carry out an order of the Labour Court is guilty of an offence and liable, on summary conviction, to a fine. In addition to the fine, a court of law may award the employee arrears of remuneration. The amount of arrears which may be awarded under the Act is subject to the limitation that a person shall not be entitled to payment by way of such arrears in respect of a time earlier than three years before the date on which the dispute was referred under section 7 of the Act to an Equality Officer.

223. Sections 9 and 10, as amended by the 1977 Employment Equity Act, provide that it is an offence for an employer to dismiss a woman solely or mainly because she has sought equal pay under the Act or given evidence in any equal pay proceedings. A woman alleging dismissal under either of these sections may take proceedings in a court of law or complain to the Labour Court. Remedies available to an employee under these sections are compensation subject to a maximum of 104 weeks remuneration, reinstatement or re-engagement. Section 11 of the Act provides that the provisions of the Act apply equally to men.

Employment Equality Act, 1977

224. This Act makes direct or indirect discrimination on the grounds of sex or marital status unlawful. Specifically section 3 makes it unlawful to discriminate on the grounds of gender or marital status in the following cases: recruitment for employment; conditions of employment (other than in remuneration or a term relating to an occupational pension scheme); training or work experience; and opportunities for promotion.

225. Section 5 makes it unlawful for a workers' or employers' organization or any body which controls entry to, or the carrying on of, a profession to discriminate on grounds of gender or marital status.

226. Section 6 makes it unlawful to discriminate in the provision of courses in vocational training to persons over compulsory school-leaving age. Section 15, however, allows positive discrimination in the provision of courses where during the previous 12 months there were no persons of that gender, or comparatively few, doing that work.

227. Sections 7 and 8 prohibit discrimination by employment agencies and the display or publication of discriminatory advertising.

228. Section 12, as amended by Statutory Instrument Number 331 of 1985 (European Communities (Employment Equality) Regulations, 1985), excludes employment in the Defence Forces and employment which consists of the performance of services of a personal nature where the gender of the employee constitutes a determining factor from the provisions of the Act.

229. Section 14 provides that the provisions of the Act do not apply to any action taken by an employer in compliance with certain worker legislation which places restrictions on the employment of women.

230. Section 16 excludes the provision of special treatment to women in connection with pregnancy or childbirth from the provisions of the Act.

231. Section 17, as amended by S.I. No. 331 of 1985, excludes posts where gender is an occupational qualification from the provisions of the Act.

232. Section 19 provides that persons who feel that they have been discriminated against may take their cases to the Labour Court, which then decides whether to refer the matter to an Equality Officer for investigation and the issue of a recommendation, or to an Industrial Relations Officer for conciliation. (In practice, cases are referred to Equality Officers.)

233. Sections 20 and 36 provide for the referral of cases of discrimination to the Labour Courts by the Employment Equality Agency.

234. Section 21 provides for an appeal to the Labour Court against a recommendation of an Equality Officer or for a determination that a recommendation has not been implemented. It also provides for an appeal against the determination of the Labour Court on a point of law to the High Court.

235. Section 24 provides that where a complaint is made to the Labour Court that a determination has not been implemented the Labour Court may make an order directing that the determination be implemented. Failure to comply with an order of the Labour Court is an offence liable on summary conviction to a fine. In addition, the court may award damages not exceeding 104 weeks remuneration. An appeal may be made by the plaintiff to a higher court against the amount of the award.

236. Under sections 25 and 26 it is unlawful for an employer to dismiss an employee for pursuing an action under the Act. An employee can have such a complaint dealt with by the Labour Court or in a court of law. Remedies available under these sections are reinstatement, re-engagement or compensation. Where the court of law option is availed of, an appeal regarding the amount of the fine can be made to a higher court. Where a case is referred to the Labour Court, an appeal can be made to the High Court on a point of law.

Article 27

A. Ethnic Groups

237. In so far as Ireland is concerned, the only ethnic group that might be covered by this Article is the travelling community. Some of the bodies representing travellers claim that members of the community constitute a distinct ethnic group. The basis for this claim is somewhat unclear. However, the Government of Ireland accepts the right of travellers to their cultural identity, regardless of whether it may properly be described as an ethnic group. In any event, there is no legal restriction on any such group "to enjoy their own culture, to profess and practise their own religion or to use their own language" as outlined in Article 27 of the Covenant.

238. The following provisions of the Constitution may be relevant in this regard. Article 40 provides:

> 1. "All citizens, shall, as human persons, be held equal before the law.
>
> [...]
>
> 3(1) The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.
>
> 3(2) The State shall in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen."

In Article 40.6.1 (i) the State guarantees the right of citizens to express freely their convictions and opinions. In Article 44.2.1 the State guarantees the free profession and practice of religion, subject to public order and morality.

239. The Prohibition of Incitement to Hatred Act, 1989, provides for protection against any form of incitement to hatred against groups of persons in the State on account of their "race, colour, nationality, religion, ethnic or national origins or membership of the travelling community".

240. In recognition of the special needs of the travelling community the Government issued a policy statement in 1984 covering services for the travelling community provided by a range of Government Departments. A committee to monitor the implementation of this policy was set up and meets on

a monthly basis. Annex IV outlines specific arrangements with regard to the provision of health care, education and training and the provision of accommodation and housing to the travelling community. It could be argued that an element of the culture of the travelling community is its tendency towards mobility. The Government is endeavouring to protect this aspect of their culture through the provision of serviced halting sites for the travelling community. The cost of all of this is funded by the State in recognition of the special needs of the travelling community.

B. Linguistic Minorities

241. With respect to linguistic minorities, it may be observed that, while the Irish language is the first official language of the State (the other language being English), it is used as a vernacular only by a minority of the population as a whole and, in particular, in a number of areas located throughout the country designated officially as Irish speaking districts. A special Minister is charged with the promotion of the cultural, social and economic welfare of those areas and with encouraging the preservation of Irish as a vernacular language. He is head of a special Government Department which promotes many schemes which help to foster the Irish language not only in the designated areas but also in the country in general.

242. As far as the designated areas are concerned the Department, which has a 1992 budget of some £27 million, endeavours to improve the infrastructure of those areas, and consequently the quality of life of those who live in them, by providing grant-aid for amenities such as housing (50 per cent premium), and water and sewerage (10 per cent premium) while grants for improvement works on existing houses are also available, although such grants are no longer paid outside the designated areas. The Department also provides full-cost grants to improve marine facilities such as piers and slipways, although central Government grants for such facilities outside the designated areas do not exceed 75 per cent. In addition, the Department provides grants for numerous recreational facilities, such as Community Halls and sporting facilities, for which assistance is not normally available from central Government outside the designated areas. The Department also plays an active role in assisting cultural activities and grants-aid for the publication of books, magazines and a weekly newspaper in the Irish language.

243. The Minister also has under his aegis two statutory bodies. One of these is primarily concerned with the promotion of industrial development in the designated areas and is empowered to offer more favourable incentives to prospective industrialists than are available outside the designated areas. Its 1992 budget amounts to some £15 million. The other statutory body is charged with the promotion of Irish as a living language throughout the country. While much of its work is of an advisory nature, it provides grants for Irish language organizations involved in educational matters, e.g. Irish language nursery schools. Its 1992 budget is £1.5 million.

244. In 1970, on the recommendation of the Minister for the Gaeltacht, the Government accepted a scheme proposed by RTE for the provision of a Radio service for the Gaeltacht and Irish speakers in general. In connection with the establishment of Radio na Gaeltachta, a committee, Comhairle Radio na Gaeltachta was appointed under section 21 of the Broadcasting Authority Act,

to exercise close surveillance over the general policy and operation of the service. Members of Comhairle Radio na Gaeltachta are appointed by RTE with the consent of the Minister for Communications. Radio na Gaeltachta broadcasts on both medium wave and FM for 12 hours Monday to Friday and 9 hours Saturday and Sunday. The hours of broadcasting which are fixed by the RTE Authority are subject to the approval of the Minister for Tourism, Transport and Communications. While the national radio and television service, Radio Telefis Eireann, is required to provide a certain amount of programming through Irish, the Government recognizes that television in particular could have a special impact on the revival of the Irish language. With this in mind the question of providing a special Irish language television service has been under consideration for some time.

C. Religious minorities

245. The right of religious minorities to profess and practise their religion is fully respected in Ireland. Although 93 per cent of the population profess the Roman Catholic religion, there is no State religion in Ireland. An analysis of census returns since the foundation of the State (see annex I) shows a steady decline in the number of Protestants until the 1960s and thereafter the numbers have tended to stabilize. In recent censuses there has been a large increase in the number of persons who have stated they are of other religions, or of none. Unlike the situation in Northern Ireland, there is no reason to suppose that within the State the political views of the minority religions nowadays differ significantly from those of the population as a whole. There are members of the minority religions in prominent positions in all of the major political parties, in the judiciary (where 3 out of 18 High Court Judges are believed to be members of minority religions) and in the Civil Service and business and professional life of the country. In recent years there has been a growth in the number of Muslims in Ireland (which was formerly insignificant) and this has led to the building of a number of mosques and the opening of the first Muslim National School, (i.e. a primary school under Muslim management but paid for mainly out of State funds).

List of annexes*

Annex 1 - Statistics relating to demography

Annex 2 - Statistics relating to the economy, labour force, employment and unemployment

Annex 3 - Statistics relating to health, education and social welfare

Annex 4 - Government policy in relation to the Travelling Community

Annex 5 - Map of Ireland

---

* The annexes, as received in English from the Government of Ireland, are available for consultation in the files of the United Nations Centre for Human Rights. They are common to this report and to the core document of Ireland (HRI/CORE/1/Add.15).